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THIRD EDITION.

MARCH, 1881.

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THE

# JUDICATURE ACTS,

## 1873 AND 1875,

THE APPELLATE JURISDICTION ACT, 1876, AND OTHER STATUTES,

THE RULES OF COURT AND ORDERS IN COUNCIL,

WITH NOTES:

FORMING A

## Practice of the Supreme Court.

BY

J. M. LELY AND W. D. I. FOULKES,

BARRISTERS-AT-LAW.

THIRD EDITION.

LONDON:

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# PREFACE

TO THE

# THIRD EDITION.

SINCE the commencement of the Judicature Acts in 1875, no less than eleven sets of "Rules of the Supreme Court" have been issued, besides many Supplementary Orders and Regulations. All the Rules of the Supreme Court have been duly incorporated in their places. Search has been made for various "Orders of Court," not being Rules of the Supreme Court, issued from time to time on points of detail, and they have been collected together under the head of "Subsidiary Regulations." The decisions have been numerous and somewhat difficult to assort, but it is hoped that none of them will be missed.

It was part of the original plan of the book to deal in some measure with the mass of old procedure which has been left unaffected by the Judicature Acts. A selection of Acts and Rules of this character was inserted in the First Edition, and was left unaltered in the Second. Occasion has been taken in the present Edition to revise and enlarge this collection, which now comprises under the heading "Additional Acts and Rules," the Statutes relating to Arbitration, to Oral Evidence and Trial by Jury, to Imprisonment for Debt, to Evidence on Commission, to the Remission of Actions to County Courts, and to County Court Appeals.

J. M. L.
W. D. I. F.

THE TEMPLE,
*26th February*, 1881.

# PREFACE

TO THE

# SECOND EDITION.

It may be imagined that the fourteen months which have elapsed since the commencement of the Judicature Acts have rendered many additions and alterations necessary throughout this Book. The reconstruction of the judicial system has been completed by the Appellate Jurisdiction Act of 1876; four new sets of Rules of the Supreme Court, besides various Orders in Council and other Orders, have been issued, and the Judicial Decisions have left few points untouched. In the present Edition, the three Acts of 1873, 1875 and 1876 are first printed in succession, and are followed by the Schedule to the Act of 1875, as modified by the new Rules, under the recognized title of "Rules of the Supreme Court," the various amendments and additions being inserted in their proper places, and the four sets of New Rules being also collected towards the end of the Book.

It is hoped that all the Reported Court Decisions up to the close of the year 1876 have been inserted in the notes, with references to the current Reports. With regard to the Decisions in Chambers, it has been thought best to insert a small proportion of them only—about one-fourth part of the whole—and to give but one reference.

In order to make the Work quite complete, the Standing Orders of the House of Lords under the Act of 1876, as well as the Orders as to Court Fees, and all other Rules, Orders and Regulations under the three principal Acts, are inserted.

It remains to state that only one of the Editors is responsible for the present Edition. Mr. Foulkes was called away on a case in the United States at a time when a second Edition appeared likely to be required, and the Editor deemed it advisable not to wait for his return, but to secure some help at once. This they obtained from their friend, Mr. Noel H. Paterson, of the Middle Temple; and the present Editor has much pleasure in acknowledging his obligations to Mr. Paterson for most valuable assistance throughout the progress of the Edition.

J. M. L.

Inner Temple,
*January 5th*, 1877.

# PREFACE

TO THE

# FIRST EDITION.

On such a subject as the Supreme Court of Judicature Acts little original writing will be expected at this date, and the most that can be done is to present the statutory matter in a convenient shape. Intersectional notes to the Acts and Rules of Court have been supplied by the writers with the view of indicating the sources of the New Procedure and of throwing such light as was available upon its working. The marginal notes to the statutes, which are of no legal value, and are sometimes practically defective, have been re-written, and marginal notes have been supplied to the Rules in a manner which, it is hoped, will be an assistance to the reader, both in finding his way among them and in seeing their drift. The summary which is prefixed contains, in the writers' own language, all the steps in an action in chronological order, and gives special prominence to innovations.

It was necessary that law left standing should be passed over with a light hand, as it is part of the scheme of the Judicature Acts not to repeal expressly any portion of the old practice, but to leave it to adapt itself to the new system. Some portions of the old procedure have been expressly incorporated in the new, and these it has been thought advisable to collect together under one head, while a selection of such portions of the remainder as appeared likely to be most useful has been added. This arrangement, it is believed, will not only be of some value in practice, but will also help to give a correct general idea of the operation of the Supreme Court of Judicature Acts.

J. M. L.
W. D. I. F.

*September 1st*, 1875.

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# THE JUDICATURE ACTS, 1873, 1875.

## History of the Supreme Court and Summary of its Procedure.

The Supreme Court of Judicature in England is formed by a consolidation of the Courts of Chancery, Queen's Bench, Common Pleas, Exchequer, Admiralty, Probate and Divorce. Of these the Queen's Bench, Common Pleas and Exchequer, which were the superior courts of common law, are said to have sprung from the Aula Regis or supreme court of justice established by the Norman sovereigns. To each of them, as to a committee of the Aula Regis, was originally allotted a distinct jurisdiction. Thus the Queen's Bench was concerned with pleas of the Crown, or criminal causes; the Common Pleas with *communia placita*, or suits between subject and subject; and the Exchequer with matters of revenue.

Common Law Courts.

In very early times the Court of Exchequer usurped jurisdiction in all personal actions by means of the fiction of *quominus*, which was an allegation introduced into proceedings between subject and subject to the effect that the king's revenue was prejudiced by the neglect of the defendant to satisfy the claim of the plaintiff, who was supposed to be a debtor of the Crown. Similarly the Court of Queen's Bench became possessed of the same jurisdiction by allowing a fictitious suggestion that the defendant had committed a breach of the peace, and was in the custody of the marshal under a writ of *latitat*.

The Court of Common Pleas retained exclusive jurisdiction in real actions until recent years, when real actions were in general abolished, and about the same time the fictitious allegations used in the other two courts were made unnecessary. The three courts together administered common law as distinct from equity.

Court of Chancery.

The Court of Chancery, as a court of equity, in which character alone it was of paramount importance, owed its jurisdiction in the first instance to the practice of persons who thought themselves aggrieved by the law administered in the ordinary courts applying to the Lord Chancellor, or being referred by the sovereign to him, he having been from the earliest times an important officer of the Crown and a member of the Aula Regis. The Master of the Rolls, as a Master in Chancery, drew to himself jurisdiction subsidiary to that of the Lord Chancellor; and by statute the Vice-Chancellors were empowered to exercise in the first instance the jurisdiction of the Court of Chancery.

Court of Admiralty.

The Court of Admiralty, the judge of which sat as deputy of the Lord High Admiral, and which had jurisdiction over maritime causes, was first erected by King Edward III. If it exceeded its jurisdiction, it could, as an inferior court, be restrained by prohibition from any one of the superior courts. The abolition of such a prohibition is one of the effects of the present consolidation of the Admiralty Court in the Supreme Court.

Court of Probate.

The Court of Probate was substituted by statute, in 1857, for the Ecclesiastical Courts of each diocese, which formerly exercised jurisdiction over wills and intestacies, in respect of personal property. Jurisdiction over intestacies is said to have been conferred on the Church by the sovereign, who as *parens patriæ* was at common law entitled to goods not left by will; and jurisdiction over wills, by which instruments the title of the Church would be superseded, had naturally followed.

Court of Divorce.

In a similar manner, the Court of Divorce was created by statute in 1857, and invested with jurisdiction in matrimo-

nial causes, till then, as concerned with a contract sanctioned by religion, exercised in the Ecclesiastical Courts; and also with the power, till then exercised by parliament alone, of decreeing the dissolution of a marriage.

Courts of Appeal.

From each of these courts there had always been an appeal to various higher tribunals. The Exchequer Chamber was, in the reigns of Edward III. and Elizabeth, erected into a Court of Error from the judgments of the Courts of Exchequer and Queen's Bench respectively, and was in 1830 made a formal Court of Appeal, in which the decisions of one of the three superior courts of law were reviewed by the judges of the other two. In the Court of Chancery, a rehearing in the nature of an appeal could be had from the Master of the Rolls or Vice-Chancellors before the Lord Chancellor himself; and, since 1851, before the Lord Chancellor and Lords Justices, who were created in that year to assist the Lord Chancellor in his appellate jurisdiction. From each of these intermediate Courts of Appeal, as well as from the Courts of Probate and Divorce, there was an appeal to the "High Court of Parliament." This jurisdiction of ultimate appeal appears to have originated before legislative and judicial functions came to be separated. It was always exercised by the Lords, and was distinctly disclaimed by the Commons in the reign of Henry the Fourth.

House of Lords and Privy Council.

Every peer has a right to vote in these proceedings; but in modern times the judicial functions of the house have always been exercised by the law lords alone. From the Admiralty Court the appeal lay to the sovereign in council, to whom also was the appeal in ecclesiastical and colonial causes; and also from the Lord Chancellor in matters of lunacy.

Of the Courts now consolidated, the Courts of Admiralty, Probate and Divorce administered the law each in a distinct and well-defined subject-matter. The Court of Chancery on the one hand, and the three Superior Courts of Common Law on the other, administered the law on distinct principles, constituting the systems of equity and common law. The common law, although liberal in applying old prin-

Conflict of Law and Equity.

ciples to new circumstances, and, where mercantile interests were concerned, not adverse to adopting new ideas, was constrained by absolute rules derived from Saxon and Norman jurisprudence. Equity, on the other hand, professed to be guided more by the dictates of conscience than strict legal rules, and adopted certain of the principles of the civil law. So great was the divergence between the two systems that, as has been often said, a litigant on one side of Westminster Hall might be pronounced clearly in the right, and on the other clearly in the wrong. In this conflict the Court of Chancery, by its writ of injunction prohibiting a party from prosecuting his rights at law, gained a complete control over the courts of common law in those subjects to which the principles of equity were applied. For instance, the courts of law construed a mortgage according to the strict terms of the deed, and considered the lender absolute proprietor of the estate upon failure of the borrower to repay the loan on the day named. On the other hand, equity recognized a right in the borrower to have the estate re-conveyed to him on repayment of the loan after the day named had passed; and if the mortgagee brought an action to enforce his legal right, the mortgagor might file a bill in the Court of Chancery, which would, on payment of the loan, restrain the mortgagee from proceeding further with his action.

The refusal of the courts of law to recognize more than one kind of ownership in property threw the whole jurisdiction over trusts and over the majority of cases involving a disputed title to property into the hands of the Court of Chancery. Litigant parties also resorted to the court of equity in preference to the courts of law, because it afforded in some cases a more convenient remedy than the common law specific of damages, and a more effective procedure for some purposes. The non-performance of a legal obligation was at law compensated by a sum of money only, while in equity a decree could be made to carry out the obligation in terms. Again, in equity a party was allowed to interrogate and obtain answers on

oath from his opponent as a first step in the cause, which advantage was denied him at law, and great freedom for determining the rights of all parties in the subject of the suit was allowed in equity, while an action at law only decided in litigation of two antagonistic parties. By these means the Court of Chancery obtained a practically exclusive jurisdiction over trusts, mortgages, the specific performance of contracts, the restraining of wrongs, the taking of accounts, and the winding-up of the estates of deceased persons, and to this extent it obtained jurisdiction over a distinct subject-matter. So far as the subject-matter with which the Court of Chancery dealt was distinctive, its jurisdiction may be said to have been mainly of an administrative character, as distinguished from the strictly litigious character of the jurisdiction of the courts of common law. Other branches of equity, in which the conflict of principles had not been so intense as to give the Court of Chancery a jurisdiction over a distinct subject-matter, were the guardianship of infants, mistake, accident, choses in action, and contracts with collateral stipulations.

This confusion produced obvious practical evils. Very partial attempts at a remedy were made from time to time by statutes passed for the purpose of declaring whether the rules of law or equity were to be followed in particular instances, such as 11 Geo. 4 & 1 Will. 4, c. 46, as to illusory appointments; 30 & 31 Vict. c. 48, as to auctions; and 31 Vict. c. 4, as to sales of reversions. It is worth observing that all these statutes favoured a rule of law in preference to a rule of equity.

Remedies for conflict of Law and Equity.

With a view to the administration of law and equity together in one court no legislative action (except such imperfect efforts as that in 1734, when a very limited power of recognizing the rights of mortgagors was given to the courts of common law by the statute 7 Geo. 2, c. 20) was taken till the middle of the present century. Indeed, in 1842, what would appear a reactionary step was taken in the abolition of the jurisdiction in equity obtained by the Court of Exchequer between subject and subject by means

of the same fiction of *quominus*, which, as has been already seen, gave that court its common law jurisdiction. The jurisdiction of the Court of Exchequer in equity between subject and subject was, however, exercised distinctly from its jurisdiction at common law; and therefore the transfer of that jurisdiction to the judges in chancery did not affect in any way the question of fusion. A model for the fusion might, indeed, have been taken from the Court of Exchequer in its revenue side, where law and equity had all along been concurrently administered in the collection of the revenues of the Crown, as is well pointed out by Chief Baron Pollock in his learned and able judgment in *Att.-Gen.* v. *Halling* (15 M. & W. 687), which case decides that the equitable jurisdiction of the court in revenue matters is unaffected by the repealing statute. In 1850 the legislature took its first decisive step towards fusion. A royal commission was appointed to consider the reform of the common law courts, and ultimately in its report recommended that "a consolidation of the elements of a complete remedy in the same court was obviously desirable, not to say imperatively necessary, to the establishment of a consistent and rational system of procedure." In 1851 the Chancery Commissioners, taking up the matter from the other side of the question, reported in the same strain, that "a practical and effectual remedy for many of the evils in question might be found in such a transfer or blending of jurisdiction as would render each court competent to administer complete justice in the cases which fall under its cognizance." Subsequently to those reports the administration of both systems in one joint court was gradually led up to by a series of statutes. The Common Law Procedure Act, 1852, although it redeemed the common law system from the reproach of doing substantial injustice under cover of accurately bringing the parties to a distinct issue, did no more than clear the way for the assimilation of the two systems; but the Chancery Jurisdiction Act of the same year, besides introducing printed bills, which

Common Law Procedure Acts.

were to contain a narrative of material facts, empowered the court to examine witnesses orally as at common law, and obliged it to determine all questions of law for itself, instead of having recourse to a common law court as theretofore. In 1854 a great step was taken by the Common Law Procedure Act of that year, which gave the courts of common law power to grant an injunction. Conversely, in 1859, by Lord Cairns' Act, the Court of Chancery was enabled to award damages. The same two Acts respectively empowered the Court of Chancery to employ trial by jury in disputed issues of fact, till then exclusively a feature of the common law system, and allowed the chancery mode of trial by a judge without a jury to be adopted at common law. The Common Law Procedure Act, 1854, also introduced much of the chancery system of interrogatories—which proved the most thriving introduction of all—and allowed pleas and replications on equitable grounds to be pleaded in the courts of common law. It was thought that this last important innovation would perhaps obviate the necessity for a more thorough consolidation of the systems. But it was found impracticable to give a complete remedy with the existing machinery of the courts of common law, and the validity of equitable pleas was narrowed to cases in which the Court of Chancery, if applied to, would have granted a perpetual and unconditional injunction against the prosecution of the action at law. Accordingly, in 1869, the Judicature Commission which had been appointed in 1867 to inquire into the working of all the courts reported (*a*), that "the first step towards meeting and

Equity Procedure Acts.

Judicature Commission.

(*a*) The signatures attached to the report were—"Cairns, Hatherley, W. Erle, J. P. Wilde, R. J. Phillimore, G. Ward Hunt, Hugh Childers, W. M. James, G. Bramwell, Colin Blackburn, Montague Smith, R. P. Collier, J. D. Coleridge, Roundell Palmer, J. B. Karslake, J. R. Quain, H. C. Rothery, A. S. Ayrton, W. G. Bateson, John Hollams, and F. D. Lowndes."

Two Supplemental Commissions and four Supplemental Reports were afterwards issued, at various dates from August, 1872, to July, 1874, No. 2 dealing with County Courts, No. 3 with "Tribunals of

surmounting the evils complained of would be the consolidation of all the courts of law and equity into one court, in which should be vested all the jurisdiction exerciseable by each and all the courts so consolidated."

Act of 1873.

The Supreme Court of Judicature Act, 1873, was passed in conformity with this report under the auspices of Lord Chancellor Selborne. From the commencement of the Act all the superior courts and the Courts of Admiralty, Probate and Divorce were consolidated into one court under the name of the Supreme Court of Judicature in England. The Supreme Court was divided into "Her Majesty's High Court of Justice,"—the division of original jurisdiction—and "Her Majesty's Court of Appeal," and elaborate provisions were made for the concurrent administration of law and equity in these courts, and for the prevalence, in general, of the rules of equity in cases of conflict (*b*).

The High Court of Justice was constituted of the Lord Chancellor, the Master of the Rolls, the three Chiefs of the former common law courts, the three Vice-Chancellors, twelve of the puisne Justices and junior Barons of the former common law courts, the Judge of the Probate and Divorce Courts and the Judge of the Admiralty Court. The ancient courts were displaced, but their names were retained in the titles of divisions of the new High Court, and of judges holding offices corresponding to those of their former chiefs as presidents respectively of such divisions. The Judge in Probate and Divorce and the Admiralty Judge were formed into a division called the Probate, Divorce and Admiralty Division, so that there were five divisions in all (*c*). This arrangement of

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Commerce," No. 4 with Chamber Practice, and No. 5 with "Public Prosecutors."

In the Second Report it was recommended that the County Courts should become parts of the High Court, and should have unlimited jurisdiction, subject to a power of transfer when a claim should exceed 50*l*.

(*b*) Act of 1873, sect. 24, p. 15; sect. 25, p. 20.

(*c*) Act of 1873, sect. 5, p. 2; sect. 31, p. 29.

divisions and judges was made, subject to a power vested in the Crown, upon the advice of the judges, to alter the number of the divisions, and to abolish the offices of the Chief Justices and the Chief Baron, and of the Master of the Rolls.

The Court of Appeal, as created by this act, was intended to be final, and was to consist of "ex officio," "ordinary" and "additional" judges, the last-named body receiving no salary, and being supplied by such ex-judges as should be willing to serve. The appellate jurisdiction of the House of Lords and of the Privy Council was at the same time extinguished, and power was given to the Crown to transfer the jurisdiction of the Privy Council to the Court of Appeal by Order in Council.

The Act was originally intended to come into operation in November, 1874, and a large body of "rules of court," which had been prepared to supplement its provisions, received the approval of the judges in the summer of that year. During the session of the same year a bill for amending the Act of 1873 was introduced by Lord Chancellor Cairns, who had succeeded Lord Selborne upon the formation of a new ministry. It was, however, ultimately found necessary to withdraw the amending bill and to pass an act further postponing the commencement of the whole measure to November, 1875. Early in that year a similar amending bill was again introduced, but this came to be withdrawn—not long after its introduction—in consequence of a revived opposition to the extinction of the appellate jurisdiction of the House of Lords.

Act of 1875.

The second amending bill introduced during the same session became the Judicature Act of 1875, and, with the principal Act of 1873, came into operation on the 1st of November, 1875. By this act the extinction of the appellate jurisdiction of the House of Lords, which had been effected by the Act of 1873, was suspended until the 1st of November, 1876 (*d*), and an intermediate Court of Appeal was created. This court was appointed to consist

(*d*) Act of 1875, sect. 2, p. 65.

of—(1) five ex officio judges, being the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer; (2) not more than three ordinary judges, to be appointed by the Crown from time to time; and (3) not more than four additional judges, to be selected from time to time from among the judges of the High Court, except those of the Chancery Division (*e*).

It was further enacted, that the permanent number of judges of the High Court, which was limited to twenty-one by the Act of 1873, should not be reduced at present (*f*), and a sweeping power over circuits was given to the Queen in Council (*g*).

Procedure as scheduled to the Act of 1875.

The procedure of the Supreme Court was at first wholly contained in the schedule to the Act of 1875, which is a consolidation of the "Rules of Procedure" forming the schedule to the Act of 1873, with the "Rules of Court" approved by the judges in the summer of 1874, specimen forms of pleading, which appeared in neither set of rules, being added. That schedule was generally in the form of a code of procedure, and is divided into orders, each order being sub-divided into rules, after the fashion of the Chancery Consolidated Orders of 1860. It is not, however, a complete and exhaustive code, as in some places it incorporates, by reference, former statutory procedure, in others maintains in so many words the practice formerly in use, and is in every case to be supplemented, where silent, by the procedure applicable to the like cases in any of the former courts (*h*). A committee of judges have full power to alter the existing rules, and to make new rules from time to time, subject to their being laid before parliament, and to the power of the Crown to annul them upon address of either House (*i*).

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(*e*) Act of 1875, sect. 4, p. 66.
(*f*) Act of 1875, sect. 3, p. 66.
(*g*) Act of 1875, sect. 23, p. 80.
(*h*) R. S. C., p. 122.
(*i*) Act of 1875, sect. 17, p. 77; sect. 25, p. 84; Act of 1876, sect. 17, p. 101.

The Act of 1875 contained power for the Queen in Council, with the advice of the judges, to make rules of procedure between the passing of the act and its commencement (*k*). Additional rules were accordingly, on 12th August, 1875, issued (*l*). None of them are of a very important character, except those as to costs, which provide the scales of fees, according to which taxation is to be regulated in the Supreme Court (*m*). Simultaneously an Order in Council was issued establishing district registries, and marking out the boundaries of their jurisdiction (*n*). The importance of this subject has grown considerably since the Act of 1873 authorized the creation of offices of the Supreme Court in the country, where formal steps might be taken without resorting to London. The "Judges' Rules" assigned an area within a radius of three miles from the registry as the limit of the registrar's jurisdiction. The three miles were altered into five by the amending Bill of 1875, as originally drawn, but the recent Order in Council has finally established district registries in seventy towns, being the centres of all the more populous parts of the country, and gives the registrar jurisdiction co-extensive with the county court district, for which a county court is held in that town. This is a step towards mapping out England into districts for the purposes of the Supreme Court, as it would be easy by adding some 400 towns to the present list in the schedule to the Order in Council to supply the whole country with district registries of the Supreme Court.

Appellate Jurisdiction Act, 1876.

In 1876 it was at length finally settled that the appellate jurisdiction of the House of Lords should be preserved. The Appellate Jurisdiction Act of that year allowed an appeal to the House of Lords from any judgment or order of the Court of Appeal. The jurisdiction of the whole body of peers was not interfered with, but it was provided that no appeal should be entertained unless at least three

(*k*) Act of 1875, sect. 17, p. 77.
(*l*) Order in Council, I.
(*m*) These rules are now cited as "Rules of the Supreme Court (Costs)"—R. S. C., 1875, p. 555.
(*n*) Order in Council, II., p. 428.

"Lords of Appeal," that is, peers who have held high judicial office, be present (*o*). Power was given to the Crown to create four "Lords of Appeal in Ordinary," to rank as barons for life, and to sit and vote during their tenure of office, but no longer. Two of these Lords of Appeal were appointed immediately, and one more may be made for each two of the paid judges of the Judicial Committee of the Privy Council who should die or resign (*p*). The House is empowered to sit during a prorogation or dissolution (*q*), and to impose, by orders, conditions as to the time of appeal, and the value of the subject-matter in dispute (*r*).

The Court of Appeal was also strengthened by the transfer to that court of three of the judges of the High Court (*s*). In 1877 power was given to appoint an additional judge of the High Court in the Chancery Division. An alteration of considerable importance was made by the Act of 1876 in the conduct of business before the judges of the High Court itself. It was provided that every action should, as far as practicable, be disposed of before a single judge. This provision was subject to Rules of Court made by the Rule Committee of Judges, but the Rules made hardly went so far as was anticipated, the only practical result being to remit demurrers for hearing to a single judge, and to allow further considerations before the judge who tried the case in place of the reservation of points for a divisional court (*t*). In 1879, the Judicature (Officers) Act of that year (*u*) established a central office of the Supreme Court, whence all proceedings may issue, instead of separate offices being appropriated to different divisions.

By far the most important alteration since the Judicature Acts in the general outlines of the High Court was

(*o*) Act of 1876, sect. 5, p. 94.
(*p*) Act of 1876, sects. 6, 14, pp. 95, 98.
(*q*) Act of 1876, sects. 8, 9, p. 96.
(*r*) Act of 1876, sect. 11, p. 97.
(*s*) Act of 1876, sect. 3, p. 93; sect. 15, p. 99.
(*t*) R. S. C., Dec. 1876, p. 563.
(*u*) Page 108.

made by an Order in Council under the 32nd section of the Judicature Act, 1873, providing for the alteration in the number of divisions, and the reduction of certain of the chief judgeships to the condition of ordinary judges. On the 29th of November, 1880, it was resolved, at a Council of Judges of the Supreme Court, that the Common Pleas and Exchequer Divisions should be consolidated in the Queen's Bench, and that the offices of Chief Justice of the Common Pleas and Chief Baron of Exchequer should be abolished. On the 16th December, an Order was made carrying this resolution into effect, so that the High Court now consists of three divisions instead of five, and the Chief Justice of England and the Master of the Rolls are now, besides the Lord Chancellor, the only judges of the Court holding a distinctive rank (*v*).

It is now proposed to give a short sketch of the procedure of the Supreme Court. This is contained in the schedule to the Act of 1875 as modified by the rules issued from time to time. Eleven sets of rules have been issued since the commencement of the act, bearing date respectively December, 1875, February, 1876, June, 1876, December, 1876, May, 1877, June, 1877, November, 1878, March, 1879, December, 1879, April, 1880, and May, 1880 (*x*).

## *Summary of Procedure.*

"Actions" and "matters."

Proceedings in the High Court of Justice are divided into "actions" and "matters." The term matter is applied to that class of proceedings which are begun by motion, such as mandamus and quo warranto, or by petition, as under numerous statutes in the Chancery Division. Matters are in general regulated by the procedure in use before the Judicature Acts. Actions include all civil causes between party and party (except proceedings in

(*v*) Order in Council, V., p. 438.

(*x*) These Rules, which are printed in the body of this book in their proper places, may also be found collected together at p. 555.

divorce, which are to be conducted as heretofore), whether formerly commenced by writ at common law, or by bill or information in chancery, or by cause or citation in the Courts of Admiralty or Probate (*y*). The procedure in an action is regulated by Rules of Court.

Writ of summons.

All actions are commenced by writ of summons (*z*). The form of the writ follows that formerly in use in the common law courts, and has indorsed on it the name and address of the plaintiff, or his solicitor and agent; and any solicitor whose name appears may, on demand by a defendant, be required to disclose whether the writ was issued by his authority. The writ must also—

(A.) Specify the division of the High Court to which the action is assigned;

(B.) Be indorsed with a statement of the nature of the plaintiff's claim; and it *may* also

(C.) Be specially endorsed.

Assignment to division.

(A.) The plaintiff may, subject to certain exceptions, select whichever of the three divisions of the High Court he pleases. In cases where the Court of Chancery had an exclusive statutory jurisdiction, or where the action is brought for—(1) the administration of the estate of a deceased person; (2) the dissolution of a partnership; (3) the redemption of a mortgage; (4) the raising of portions; (5) the sale of property subject to charges; (6) the execution of trusts; (7) the rectification of a written instrument; (8) the specific performance of contracts for sale, or demise of real estate; (9) the partition of real estate; (10) the wardship of infants—the action must be assigned to the Chancery Division. Probate, divorce and admiralty causes must also be exclusively assigned to the Probate, Divorce and Admiralty Division. Again, causes and "matters" which were within the exclusive cognizance of the several superior courts of common law, are assigned to the Queen's Bench Division as absorbing

(*y*) Ord. i., Rule 1, p. 122. (*z*) Ord. ii., Rule 1, p. 122.

under the Order in Council of November, 1880, the business of the Common Pleas and Exchequer Divisions, besides inheriting the jurisdiction of the Court of Queen's Bench (*z*). The judges, however, may alter the general distribution of business by Rules of Court (*a*). And, as formerly in the case of the various branches of the Court of Chancery, any action or matter may be transferred from one division of the High Court to another by the Lord Chancellor, with the consent of the president of the division to which the action was originally assigned, and an action against a company ordered to be wound up may be transferred to himself by the judge who made the winding-up order (*b*). Several actions, whether in the same or different divisions, may also be consolidated into one (*c*). Transfer.

(B.) The indorsement of the nature of the plaintiff's claim, or "general indorsement" as it is called, places the first formal step in an action in an intermediate position between the chancery bill, which gave every information, and the common law writ, which gave none. The indorsement need not set forth the precise ground of complaint, but must contain "a statement of the nature of the claim made, or of the relief required" (*d*). The extent of the information intended to be given will be best shown by some examples from the forms in the Rules of the Supreme Court (*e*). General indorsement.

*Claim by Mortgagor.*

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage, dated , and made between [*parties*], and to redeem the property comprised therein.

*Specific Performance.*

The plaintiff's claim is to have the trusts of an indenture, dated , and made between , carried into execution.

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(*z*) Act of 1873, sect. 34, p. 33.
(*a*) Act of 1873, sect. 33, p. 32.
(*b*) Ord. li., Rules 1 and 2*a*, pp. 239 and 241.
(*c*) Ord. li., Rule 4, p. 241.
(*d*) Ord. ii., Rule 1, p. 124; Ord. iii., Rule 2, p. 126.
(*e*) R. S. C., App. A., Part 2, sects. 1—6, p. 287.

*Money Overpaid.*

The plaintiff's claim is £ , for a sum of money over-charged for the carriage of goods by railway.

*Trade Mark.*

The plaintiff's claim is for damages for wrongfully using [*or* imitating] the plaintiff's trade mark, and for a mandamus.

General indorsement.

Where the plaintiff's claim is for a debt, the writ must also contain an indorsement of the amount claimed for debt and costs, in order that the defendant may have an opportunity of paying the amount, and so preventing further litigation (*f*).

Special indorsement.

(C.) In any case where the plaintiff seeks to recover a debt or liquidated demand, he has the power (but is not bound) to "specially indorse" his writ with the particulars of the amount sought to be recovered, after giving credit for any payment or set-off (*g*). The Rules of Court in this respect follow the Common Law Procedure Act, 1852, and the same consequence of final judgment for the amount so indorsed ensues as before on the non-appearance of the defendant to the writ (*h*).

Simultaneously with the endorsements upon the writ, the plaintiff will have to consider what causes of action to join, and what persons to make parties.

Joinder of causes of action.

Much freedom in joining causes of action is allowed; the sole restriction on joining several causes of action being inconvenience in trying them together. A judge has a general power of ordering causes of action inconveniently joined in one writ to be struck out, or to be tried separately; and, in particular, a claim as trustee in bankrupty cannot without leave be joined with an individual claim, nor can personal claims by or against an executor or administrator be joined with claims not arising out of the estate of the deceased. The freedom allowed in joining causes of action is found convenient in actions between landlord and

(*f*) Ord. iii., Rule 7, p. 127.
(*g*) Ord. iii., Rule 6, p. 126, App. A., Part 2, sect. 7, p. 225.
(*h*) Ord. xiii., Rules 3, 4, pp. 146, 147.

tenant, in which the land is claimed and also damages for breach of covenant; but no other cause of action but breach of covenant and a claim for mesne profits can be joined with a claim for the possession of land (*i*). A still greater freedom is allowed in joining parties. An action is not prejudiced by joining too many plaintiffs or too many defendants, except so far as costs are concerned, but judgment will be given in favour of the proper plaintiffs and against the proper defendants. On the other hand, if too few parties are joined, the rights of parties actually joined will be determined. Full powers to amend the parties are given at any stage of the proceedings (*k*). Parties.

Having determined the form of his writ, the plaintiff's next care is where to issue it. This becomes material by reason of the institution of district registries, where all the steps in an action down to and including final judgment (*l*) may be taken, the registrar having the jurisdiction of a Master at Chambers. Resort may most conveniently be made to a district where ~~both~~ the plaintiff and all the defendants reside or carry on business within it, but if any one defendant does not reside or carry on business there, he may enter an appearance in London, and the case will proceed in town, and there are powers very favourable to the defendant for removing the action to London. He may do so at any time as of right, if the writ be not specially indorsed, and if it is so indorsed, within a limited time (*m*). Concurrent and renewed writs may, if required, be issued, a writ lasting for twelve months, and not being renewable without an order from a judge or district registrar (*n*). District registries.

Unless the defendant's solicitor agrees to accept service and enters an appearance for him (*o*), service of the writ must be effected generally as at common law before the act; that is to say, a copy of the writ must be delivered to the defendant personally. But the former mode of pro- Service of writ.

(*i*) Ord. xvii., p. 160.
(*k*) Ord. xvi., p. 152.
(*l*) Ord. xxxv., Rule 1*a*, p. 199.
(*m*) Ord. xxxv., p. 199; Ord. xii., Rules 1—5, p. 141.
(*n*) Ords. vi. and viii., pp. 133, 134.
(*o*) Ord. ix., Rule 1, p. 135.

Service out of jurisdiction.

ceeding against a defendant out of the jurisdiction, which was substituted for the ancient practice of outlawry, is replaced by one mode of service upon a defendant out of England. In certain specified cases in which the matter is considered fairly within the cognizance of the English courts, but from which the debateable phrase, "cause of action arising within the jurisdiction," is carefully excluded, a plaintiff may obtain leave to serve a defendant out of the jurisdiction, and thenceforth the action proceeds in the ordinary way (*p*). If the defendant be resident in Scotland or Ireland, the judge in exercising his discretion as to granting leave, is to have regard to the existence in those countries of a local court having jurisdiction in the matter in question (*q*). A notice of writ of summons is also provided. This is intended for service on a foreigner as in the former practice at common law, and also where publication in a newspaper or elsewhere is substituted for service, under the full powers for allowing service in any form as well as substituted service properly so called—that is, service on a person other than the defendant, such as his solicitor or agent. These powers may be invoked wherever the plaintiff is unable to effect "prompt personal service." Special provisions are made for service on married women, infants and lunatics, which last, in general, sue and are sued through committees; and partners, who may now be sued in the name of the firm, may be served in the person of one partner or of a manager at their place of business. In actions for the recovery of land, where no one is in possession, the writ may be served by posting a copy on a door or other conspicuous place. There is a similar mode of service, in admiralty actions *in rem*. The date of service must be indorsed by the person who effects it within three days (*r*).

Scotland or Ireland.

Notice of writ.

Appearance.

If the defendant intend to resist the plaintiff's claim, his first step is to enter an appearance to the writ by delivering

(*p*) Ord. xi., p. 139.
(*q*) Ord. xi., Rule 1*a*, p. 140.
(*r*) Ords. ix.—xi., pp. 135—141.

a memorandum of appearance. If the defendant resides or carries on business within a registry district, he must enter his appearance to a registry writ in the district registry. If he has neither residence nor business there, he may appear to a registry writ either in London or in the district registry at his option. The place for further proceedings is governed by the place of appearance. There are special provisions for allowing persons not named as defendants to appear in probate and admiralty actions and in actions for the recovery of land (*s*).

Default of appearance.

Under the head of default of appearance, full advantage is allowed to a plaintiff whose opponent, in not appearing, yields at the first point. In claims for liquidated amounts, on filing an affidavit of service he may sign judgment at once for the amount specially indorsed on the writ and costs, or, if there be no special indorsement, for the amount stated by him in his affidavit to be due. In claims for unliquidated damages there must be a writ of inquiry or an assessment by any one of the usual modes of trial which a judge may order. In an action for the recovery of land judgment may be obtained by default. Judgment is not signed in actions exclusively assigned to the Chancery Division or probate actions, upon default of appearance; but on an affidavit of service the action proceeds as if the defendant had appeared. Where the writ is issued out of the district registry, and there is an option to appear there or in London, judgment cannot be entered until time has been allowed for a letter from London to reach the plaintiff (*t*).

Final judgment where writ specially indorsed.

Even if the defendant appear to a specially indorsed writ, it does not necessarily follow that the plaintiff will have to go to trial, as a practice somewhat similar to that employed under the Bills of Exchange Act is applied to all actions begun by this form of writ. The plaintiff may, by filing an affidavit verifying his own cause of action, and declaring his belief that there is no defence to it, call on

(*s*) Ord. xii., p. 141.

(*t*) Ord. xiii., Rule 5*a*, p. 147.

the defendant to show cause why final judgment should not be signed. The defendant must disclose enough to the court or judge to show that he has a good defence, otherwise the order will be made (*u*). Similarly, where a claim for an account is made on the writ, an account will be ordered, if the defendant has failed to appear, or if he has appeared and failed to show that there is a preliminary question to be tried (*x*). Applications of this kind are usually made in the first instance at judges' chambers, where, in the Queen's Bench Division the masters have jurisdiction, with certain specified exceptions, to make orders, subject to an appeal within four days to the judge, and ultimately within eight days to a divisional court (*y*).

Account.

Chambers.

Pleading.

The mode of pleading to be used in the High Court appears to have been cast with the object of establishing a system, which should retain, as far as possible, the brevity of common law and the intelligibility of equity pleading, while abandoning the technicality of the one, and the prolixity of the other. Indeed, the plaintiff need not deliver any pleading at all beyond that which has already appeared as the indorsement of the writ, if the defendant, in appearing, state that he does not require the delivery of a statement of claim (*z*).

Statement of claim.

Supposing, however, that the defendant does not in terms dispense with a statement of claim, the plaintiff must within six weeks from the time of appearance deliver a statement. If the plaintiff do not deliver his statement within the time allowed for it, he is liable to have his action dismissed for want of prosecution. Even when the defendant dispenses with a statement of claim, the plaintiff may, at his own risk as to costs, deliver a statement, if he thinks it essential to the proper development of his suit.

Forms of statement of claim.

The character of the statement of claim will be best shown by one or two examples taken from the forms pro-

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(*u*) Ord. xiv., p. 149.
(*x*) Ord. xv., p. 151.
(*y*) Ord. lii., p. 242.
(*z*) Ord. xix., Rule 1, p. 163; Ord. xxi., Rule 1, p. 173.

vided in Appendix C. to the Rules of the Supreme Court. The forms are merely intended by way of example, but supply a frame-work on which the statement of many ordinary claims may be moulded (*a*). If the plaintiff wish the action tried elsewhere than in Middlesex, his statement must name the county (*b*). The following, omitting formal matter, is the statement of complaint given in an action for the administration of an estate:—

Administration of estate—statement of claim.

1. A. B., of K., in the county of L., died on the 1st of July, 1875, intestate. The defendant G. H. is the administrator of A. B.

2. A. B. died entitled to lands in the said county for an estate of fee simple; and to some other real estate and to personal estate. The defendant has entered possession of the real estate of A. B. and received the rents thereof. The legal estate in such real estate is outstanding in mortgagees under mortgages created by the intestate.

3. A. B. was never married; he had one brother only, who pre-deceased him without having been married, and two sisters only, both of whom also pre-deceased him, namely, M. N. and P. Q. The plaintiff is the only child of M. N., and the defendant is the only child of P. Q.

The plaintiff claims—

1. To have the real and personal estate of A. B. administered in this court, and for that purpose to have all proper directions given and accounts taken.
2. To have a receiver appointed of his real estate.
3. Such further or other relief as the nature of the case may require (*c*).

Negligence—statement of claim.

The following is the form of statement of claim in an action for negligence:—

1. The plaintiff is a shoemaker, carrying on business at . The defendant is a soap and candle manufacturer, of .

2. On the 23rd May, 1875, the plaintiff was walking eastward along the south side of Fleet Street, in the city of London, at about three o'clock in the afternoon. He was obliged to cross Street, which is the street running into Fleet Street at right angles on the south side. While he was crossing the street, and just before he could reach the foot pavement on the further side thereof, a two-horse van of the defendant's, under the charge and control of the defendant's servants, was negligently, suddenly, and without any warning, turned at a rapid and dangerous pace out of Fleet Street into Street. The pole of the van struck

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(*a*) Ord. xix., Rule 4, p. 165; App. of Forms, C., p. 310.

(*b*) Ord. xxxvi., Rule 1, p. 204.

(*c*) App. of Forms, C., No. 2, p. 310.

the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims £ damages (*d*).

Administration of estate —defence.

The following is the statement of defence supplied by the forms in Appendix C. in an action for the administration of an estate:—

1. The plaintiff is an illegitimate child of M. N. She was never married.

2. The intestate was not entitled to any real estate at his death, except a copyhold estate situate in the county of R., and held of the manor of S. According to the custom of that manor, when the copyholder dies without issue, and without leaving a brother, or issue of a deceased brother, the copyhold descends to his elder sister and her issue in preference to his younger sister and her issue. P. Q. was older than M. N.

3. The personal estate of A. B. was not sufficient for the payment of his debts, and has all been applied in payment of his funeral and testamentary expenses and part of his debts (*e*).

Negligence—defence.

The following is the statement of defence in an action for negligence given in Appendix C.:—

1. The defendant denies that the van was the defendant's van, or that it was under the charge or control of the defendant's servant. The van belonged to Mr. John Smith, of , a carman and contractor employed by the defendant to carry and deliver goods for him; and the persons under whose charge and control the said van was were the servants of the said Mr. John Smith.

2. The defendant does not admit that the van was turned out of Fleet Street either negligently, suddenly, or without warning, or at a rapid or dangerous pace.

3. The defendant says, that the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the van approaching him, and avoided any collision with it.

4. The defendant does not admit the statements of the third paragraph of the statement of claim (*f*).

Character of new pleading.

The freedom and absence of technicality of the recognized system of pleading are sufficiently evident from

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(*d*) App. of Forms, C., No. 20, p. 339.

(*e*) App. of Forms, C., No. 2, p. 310.

(*f*) App. of Forms, C., No. 20, p. 399.

these examples. Everything like the common law pleas of "Never indebted" and "Not guilty," which meant so much more than they said, is entirely abandoned. The words used are to be taken in their ordinary signification, without any implication of law, such as often lurked in the averments of the former common law pleadings. Suppose, for instance, the statement of claim charge the defendant with uttering a slander, and the defendant in his statement says that he is not guilty. Under the common law system, this plea was held to include an allegation that the words uttered were privileged. By a not very admirable process of logic, it was argued that if the words were privileged they were not slanderous, and therefore the defendant was "Not guilty." Under the recognized system, if the defendant in an action of slander says that he is not guilty, the phrase will bear its proper untechnical signification, that is, that the defendant did not utter the words imputed to him. In the same way, in an action on a contract entered into by the plaintiff's agent, it would have been considered a blunder to mention the agent at all in the declaration. The plaintiff would be said to have entered into the contract, and the maxim, *qui facit per alium facit per se*, would have borne the pleader out. Under the new system, if a contract is stated to have been entered into by a party, it will be taken that he entered into it personally. Similarly, if the defendant deny the making of a contract, it will be taken to mean that he did not make the contract in point of fact, not that no such contract existed in contemplation of law by reason of a legal informality, such as non-compliance with the Statute of Frauds. The more obvious forms of unfairness in the use of language, such as negatives pregnant and evasive denials, are expressly forbidden by the Rules. For instance, if it be alleged that the defendant received a certain sum of money, he must deny that he received that sum or any part of it, or else state how much he did receive. Moreover, the parties are required to admit in their pleadings what they cannot fairly dispute, under pain of incurring costs. In fact, the new mode of pleading

Character of new pleading.

supposes two laymen, who intend to fight out a dispute frankly and honestly, and who agree, in order that they may see exactly what the difference between them is, to send to each other alternately letters containing statements by each of all the facts which he believes to have happened, and which the other ought to know, in order to deny or explain them (*g*).

Much of the theory of common law pleading was based on the assumption that there were two parties to the action completely antagonistic to one another on every point. The present system makes an action rather play the part of settling all the disputes between plaintiff and defendant, or all the disputes between them and any other persons, whether interested jointly or separately, primarily or in the alternative, arising out of the same transaction (*h*). It may be noticed that the principle is fully recognized, that all the legal claims are sufficiently compensated by a money payment, a defendant being now allowed to plead payment into court in all cases where debt or damages are claimed, the former exception of cases where honour or good name was concerned being done away with (*i*).

Counter-claims.

Complete power is given to defendants to set up counter-claims against the plaintiff instead of bringing a cross action; and counter-claims may be made against persons not originally parties to the action by serving them with a notice in the nature of a writ of summons (*k*).

Reply.

After the delivery of the statement of defence the reply is delivered within three weeks; and here the course of pleading stops, unless special leave be obtained to carry it further, except that a joinder of issue may be delivered after reply, and always constitutes the close of the pleadings (*l*). Payment into court may be made in all actions where money is claimed, and may be pleaded as a defence (*m*). A plaintiff may always discontinue his action on paying costs before or immediately after

Discontinuance.

(*g*) Ord. xix., p. 163.
(*h*) Ord. xvi., p. 152.
(*i*) Ord. xxx., p. 189.
(*k*) Act of 1873, sect. 24, subsect. 3, p. 15.
(*l*) Ord. xxv., p. 179.
(*m*) Ord. xxx., p. 189.

delivery of the statement of defence, and may afterwards begin a new action. To discontinue at a later point requires a judge's order (*n*). Full powers for amending pleadings are given by leave of a judge, and without leave plaintiff may amend his statement of complaint once before replying, subject to disallowance and counter-amendment; and a defendant has a similar right in reference to a set-off or counter-claim, subject in both to the amendment being disallowed by the judge and counter-amendments allowed. Amended pleadings are to be delivered to the opposite party (*o*); and when it is desired to plead facts which have arisen since a pleading was delivered, a further pleading is allowed (*p*). In case the pleadings fail in defining clearly enough the issues in dispute between the parties, it is provided that issues be prepared and settled, if necessary, by the judge (*q*). This is a new proceeding, which suggests a misgiving whether the method of pleading at large now introduced will be as effective as the common law pleading in bringing parties to an issue. The parties may also concur at any time after writ in stating a special case for the purpose of deciding any question of law which may arise in the action; and if a judge think it convenient a preliminary point may be ordered to be heard first (*r*).

Amendment

Issues.

Special case.

Inquiries and accounts may also be ordered at an intermediate stage of the proceedings (*s*).

Inquiries and accounts.

Fresh parties may be added on death, marriage, or bankruptcy of any party to the action, or the assignment of their interest. No abatement takes place, but leave to make the necessary alteration is obtained (*t*).

Change of parties by death.

If either party think his opponent's pleading insufficient in point of law, he may demur, when the question will be brought before the court for argument, and will be heard by a single judge (*u*). The demurrer maintains a

Demurrer.

(*n*) Ord. xxiii., p. 177.
(*o*) Ord. xxvii., p. 179.
(*p*) Ord. xx., p. 172.
(*q*) Ord. xxvi., p. 179.
(*r*) Ord. xxxiv., p. 197.
(*s*) Ord. xxxiii., p. 197.
(*t*) Ord. l., p. 238.
(*u*) Act of 1876, sect. 17, p. 102.

convenient means for deciding actions which turn entirely on questions of law, and at the same time ensures that each party will deal with all the material allegations in the preceding pleading, so as not to lay himself open to this form of attack (*x*).

Interrogatories.

To substantiate his pleadings, it may become essential to either party to extract evidence from his opponent, and great facilities are given for this purpose by a simple process of written interrogatories to be answered by the opposite party. The plaintiff or defendant wishing to interrogate delivers his questions with his pleading, and the other party must answer them in ten days. If he object to any of them, his usual course is to take the objection in his answer, but he may, if they or any of them are unreasonable, vexatious, or scandalous, apply to a judge, who, if satisfied that the objection is well founded, may strike the interrogatory out. If the answers are insufficient, a further answer or an answer *vivâ voce* may be required. Failure to comply with an order to answer not only entails a liability to attachment, but to have the party's action dismissed or defence struck out, which latter is the more formidable alternative to defendants out of the jurisdiction. If one of the parties to an action be a corporation, an order may be obtained for the interrogation of one of its officers. The grounds on which the interrogated party may object to interrogatories by his answer are that it is scandalous or irrelevant, or not put *bonâ fide* for the purposes of the action, or not sufficiently material at that stage, or, generally, that it cannot fairly be allowed. The act, however, evidently contemplates that the parties shall make the fullest disclosure to one another (*y*).

Striking out interrogatories.

Discovery and inspection of documents.

It may be equally important to the party to an action to find out what documents are in the possession or power of his opponent, and what their contents are. The first

(*x*) Ord. xxviii., p. 182.

(*y*) Ord. xxxi., Rules 1—10, p. 190.

object is attained by obtaining an order for a discovery of documents, which can be done without an affidavit, and by which the party is required to disclose on oath all documents material to the question in dispute, and to say, for the future guidance of his opponent, why, if at all, he objects to produce them. To inspect these documents the party requires a further order of a judge, which again may be made without an affidavit. With regard to documents not disclosed under an order for discovery, an order for inspection may be obtained, based on an affidavit stating that certain documents are in the opponent's possession, and that the applicant is entitled to inspect them. With a view, apparently, to the omission contemplated by the act of the copies of documents formerly inserted at great length in pleadings and affidavits, the inspection of documents mentioned in a pleading or affidavit is made more easily obtainable. The opposite party gives notice to his opponent of his desire to inspect such documents, and if the notice is not complied with in two days, he may apply to a judge for an order for inspection without an affidavit. The discretion of the judge in reference to orders for discovery and inspection may be largely influenced by a general clause giving him power to order the production of documents, to be dealt with as he may think just. Disobedience to an order of discovery or inspection is followed by the same penalties as in the case of interrogatories (*z*).

Inspection of documents mentioned in pleading.

The parties having joined issue on their pleadings the action is ripe for trial. The trial takes place either in Middlesex—in which county and in London there are to be continuous sittings for the purpose—or in the county named in the statement of claim, without consideration of local venue, or in any other place ordered by a judge. Equity causes may be tried on circuit, and the parties are allowed a wider choice of tribunals than when a common law action was almost necessarily tried by a judge and

Place of trial.

Modes of trial.

(*z*) Ord. xxxi., Rules 11—23, p. 193.

jury, and a chancery suit by a judge. Besides these two modes of trial the action may be heard before a judge with assessors, or a referee with or without assessors, the act contemplating a reference to "official referees" (of whom four have been appointed) as well as to special referees chosen by the parties. Ten days' notice of trial is given, and with it an intimation which mode of trial is proposed. If the plaintiff fail to give the notice within six weeks, the defendant may give it, and at the same time propose the mode of trial. If the defendant does not accept the plaintiff's mode of trial, he must, if he desires trial by jury, within four days, or an extended period, give notice to that effect, in which case (subject to certain exceptions) that mode of trial will be adopted; or he must apply for an order for a different mode of trial, in which case, unless the plaintiff wishes for trial by jury, and the action is one in which he had a right to that mode of trial before the act, or which could not be tried without a jury but with consent of parties, an order may be made for another mode of trial (*a*). In cases for trial in London or Middlesex, the notice is not in force unless the cause be entered in six days (*b*). The exceptions to the right to a jury—whether becoming material on the defendant's giving notice for that mode of trial and the plaintiff resisting it, or on the plaintiff's proposing trial by jury and the defendant applying at chambers for another mode of trial—are where a prolonged examination of documents or accounts, or any scientific or local investigation inappropriate for a jury, must take place, in which case the trial may be ordered before a referee (*c*); and where before the act the action might without consent of parties be tried without a jury, in which case an order may be made for trial before a judge or any other of the modes of trial (*d*). Different questions in an action may, by order, be tried in different ways.

Trial by jury.

Reference.

(*a*) Ord. xxxvi., p. 204.
(*b*) Ord. xxxvi., Rule 10*a*, p. 208.
(*c*) Act of 1873, sects. 56, 57, p. 45.
(*d*) Ord. xxxvi., Rule 26, p. 211.

After the notice the case is entered for trial by the plaintiff or the defendant leaving two printed copies of the pleadings with the officer of the court, one of which is for the judge's use. If the defendant do not appear at the trial, the plaintiff proves his case; and if the plaintiff do not appear, the defendant may have the action dismissed or may prove his counter-claim. The case is in general tried upon evidence given *viva voce* (*e*), unless the parties have agreed to try it on affidavits, or an order has been made allowing the affidavit of certain witnesses to be used (*f*). Where the case is tried on affidavits by consent, the plaintiff will have, within fourteen days or the time agreed upon or ordered, filed his affidavits and delivered them to the defendant. In the same way the defendant will have filed his affidavits, and the plaintiff have been allowed seven days to file affidavits in reply. In the case of a trial upon affidavits the notice of trial will have been given at the close of the affidavits and not at the close of the pleadings. Where evidence has been given by affidavit the deponent may be cross-examined by the opposite party giving notice of his intention to do so, and unless the deponent is produced for that purpose his evidence cannot be used, except by special leave of the judge. At the close of the trial the judge may direct judgment to be entered for any or either party, or adjourn for "further consideration" before himself (*g*), a procedure substituted for "leave reserved" to move a divisional court, in consequence of the direction of the Act of 1876, that all proceedings in an action subsequent to trial shall as far as possible be taken before the judge who tried that action (*h*). The trial before a referee, who will sit *de die in diem* at any place deemed convenient, is in general like that before a judge, except it will not be in a public court of justice.

Evidence.

Judgment.

The conclusion of the trial will be the point at which the question of costs will arise. In theory the judge has

Costs.

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(*e*) Ord. xxxvii., p. 215.
(*f*) *Ib.*
(*g*) Ord. xxxvi., Rule 22*a*, p. 211.
(*h*) Act of 1876, sect. 17, p. 102.

a full discretion as to costs, but his discretion is guided by a *primâ facie* right to costs being conferred on the successful party in certain cases. Thus, if the action be tried by a jury, an application must be made to deprive the successful party of his costs, unless the sum recovered brings the amount within the County Court Act, in which case a certificate is necessary. In all other cases a direction as to costs must form part of the judgment as formerly in the Court of Chancery, the right of trustees and others to costs out of a particular estate being maintained (*i*). Two scales of costs, a "higher" and a "lower" scale, are provided by the Rules of the Supreme Court (Costs) (*k*).

Motion for judgment.

If no judgment be entered at the trial, the plaintiff may set the action down on motion for judgment, or the defendant may do so after the lapse of ten days. If judgment be directed at the trial, any party may move to set aside and enter another judgment upon the findings, whether of jury, judge or referee. If the trial was had before a judge or jury, the application will be to the Court of Appeal (*l*). If for any reason there ought to be a new trial of an action tried by a jury, the party may move for an order calling on his opponent to show cause; but a new trial is not granted for misdirection or improper ruling as to evidence, unless there has been a miscarriage of justice. This motion is made to a divisional court (*m*). If the finding of the judge in point of fact in a case tried without a jury is objected to, the application is to the Court of Appeal (*n*).

New trial.

Entry of judgment.

Judgment is entered upon leaving printed copies of the pleadings with the proper officer, and it may then become necessary to issue execution. For the recovery of money under a judgment the modes of execution formerly in use may be employed. A writ of possession issues for the recovery of land; and in case of a judgment for the payment

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(*i*) Ord. lv., p. 250.
(*k*) Order in Council, I., p. 407.
(*l*) Ord. xl., Rule 4, p. 221.
(*m*) Ord. xxxix., Rule 1, p. 219.
(*n*) *Ib.*

of money into court, or to do any other act within a limited time, there may be issued a writ of sequestration, which authorizes entry on the lands of the disobedient party, the receipt of the rents and profits, and the seizure of his goods. Judgment for the recovery of property may be enforced by a writ of delivery, which commands the sheriff to cause the property in question to be delivered, or a distress on the lands and chattels of the party in question until the property is delivered. A judgment requiring any act to be done or abstained from may also be enforced by writ of attachment or committal. Orders may be enforced in the same way as judgments. Execution is taken out by delivering a præcipe to the officer, and the writ, if renewed every year, lasts for six years, after which, or if any change has taken place in the parties entitled or liable to execution, an order must be obtained (*o*).

Attachment of debts and charging orders.

Analogous to an execution for the enforcement of a judgment is the attachment of a debt, and facilities are given to a judgment creditor for obtaining an order for attachment against the debtor of his judgment debtor (*p*). A charging order of shares and stock may also be made, and the High Court has jurisdiction to issue a distringas on stock at the Bank of England (*q*).

Appeal from High Court to Court of Appeal.

With the writ of execution the proceedings in an action come to an end, unless any party think proper to appeal. Very full powers of appeal, which correspond more to the second hearing in chancery than to error and appeal at law, are given to either party, and in general an appeal lies from any judgment or order of the High Court (*r*). Appeals are by way of rehearing and are no stay of execution, unless so ordered by the court appealed from or the Court of Appeal on such terms as may seem just. There is no petition or case on appeal, but a motion is made by the appellant. Any judgment or order may be

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(*o*) Ords. xlii., xliv., xlvii.—xlix., pp. 225—237.

(*p*) Ord. xlv., p. 231.

(*q*) Ord. xlvi., p. 234.

(*r*) Act of 1873, sect. 19, p. 11.

appealed against, and fourteen days' notice of appeal must be given to the parties affected in the case of a judgment, or four days' notice in the case of an interlocutory order. The Court of Appeal has all the powers of amendment of the court of first instance, and also power to hear fresh evidence, either oral or by affidavit. The costs of the appeal are in the discretion of the court. If the respondent wish to vary the judgment of the court below, he can raise the question on giving eight days' notice, or, in case of an interlocutory order, two days' notice. The appeal is set down by leaving a copy of the judgment or order, and of the notice of appeal. The affidavits or the judge's notes will be before the Court of Appeal when any question of fact is involved. Appeals from interlocutory orders must be made within twenty-one days, and against judgments within a year, unless special leave is obtained (*s*).

Appeal from Court of Appeal to House of Lords.

From any judgment or order of the Court of Appeal an appeal lies to the House of Lords (*t*). Orders of that House fix the practice and procedure on appeal, and the time within which an appeal is to be brought (*u*). The orders now in force prescribe that a petition of appeal must in general be lodged in the Parliament office within one year from the date of the last judgment appealed from (*v*), and that the reasonableness of the petition be certified by counsel (*x*). At least three "Lords of Appeal," that is, persons who have held high judicial office, must be present at the hearing of appeal (*y*).

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(*s*) Ord. lviii., p. 256.
(*t*) Act of 1876, sect. 3, p. 93.
(*u*) Act of 1876, sect. 11, p. 97.
(*v*) Standing Order I., p. 475.
(*x*) Standing Order II., p. 475.
(*y*) Act of 1876, sect. 5, p. 94.

# SUPREME COURT OF JUDICATURE ACT, 1873.

36 & 37 Vict. c. 66.

*An Act for the constitution of a Supreme Court, and for other purposes relating to the better administration of Justice in England; and to authorize the transfer to the Appellate Division of such Supreme Court of the Jurisdiction of the Judicial Committee of Her Majesty's Privy Council.*

[5th August, 1873.]

Whereas it is expedient to constitute a Supreme Court, and to make provision for the better administration of justice in England:

And whereas it is also expedient to alter and amend the law relating to the Judicial Committee of her Majesty's Privy Council:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

*Preliminary.*

Short title.

1. This act may be cited for all purposes as the "Supreme Court of Judicature Act, 1873."

Commencement of act.

[2. *This act, except any provision thereof which is declared to take effect on the passing of this act, shall commence and come into operation on the second day of November*, 1874. Repealed, 37 & 38 Vict. c. 83.]

The 2nd of November was formerly the first day of Michaelmas Term, and is now the first day of the Michaelmas Sittings (see Ord. LXI., Rule 1). The general scheme of the act was that no sections should come into operation before that date, except such as might be necessary to make arrangements for the working of the new court. These sections were:—sect. 27, as to vacations; sect. 60, as to district registries; and sect. 68, as to Rules of Court. Of these sect. 68 is repealed by the Act of 1875.

By the Supreme Court of Judicature (Commencement) Act, 1874 (37 & 38 Vict. c. 83), the second section of the Act of 1873 was repealed,

*Act of* 1873, *ss.* 3—5.

and "the Supreme Court of Judicature Act, 1873, except any provision thereof directed to take effect on the passing of the said act," was directed to commence on the 1st of November, 1875, on which day the Act of 1875 also commenced.

## PART I.

### *Constitution and Judges of Supreme Court.*

Consolidation of courts into Supreme Court.

**3.** From and after the time appointed for the commencement of this act, the several courts hereinafter mentioned (that is to say), the High Court of Chancery of England, the Court of Queen's Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, the Court for Divorce and Matrimonial Causes, *and the London Court of Bankruptcy* (*a*), shall be united and consolidated together, and shall constitute, under and subject to the provisions of this act, one Supreme Court of Judicature in England.

This section expressly effects the consolidation, not the abolition, of the old courts. This form of expression seems to have been chosen in deference to sentiment. For practical purposes an abolition takes place, because by sect. 16 the jurisdiction of the old courts is transferred to the High Court of Justice, and by sect. 22 their jurisdiction is to cease to be exercised.

It is noticeable that the old courts, although all courts of first instance, are consolidated into the Supreme Court, which title includes both the High Court, or new court of first instance, and the Court of Appeal. The term "Supreme Court" is but little used in the act, which commonly speaks of "the High Court and Court of Appeal."

"High Court of Justice" and "Court of Appeal."

**4.** The said Supreme Court shall consist of two permanent divisions, one of which, under the name of "Her Majesty's High Court of Justice," shall have and exercise original jurisdiction, with such appellate jurisdiction from inferior courts as is hereinafter mentioned, and the other of which, under the name of "Her Majesty's Court of Appeal," shall have and exercise appellate jurisdiction, with such original jurisdiction as hereinafter mentioned as may be incident to the determination of any appeal.

The term "permanent" is probably applied to the two divisions of the Supreme Court in order to distinguish them from the divisions of the High Court constituted by sect. 31, which are not permanent, but may, by sect. 32, be either increased or reduced in number by order in council. For the appellate jurisdiction of the High Court, see sects. 45, 47; and for the original jurisdiction of the Court of Appeal, see Ord. LVIII., Rule 5. The Court of Appeal has no jurisdiction to hear an original petition. (*Dunraven Adare Coal Co., In re*, 33 L. T. 371; 24 W. R. 37.)

Constitution of High Court of Justice. First judges.

**5.** Her Majesty's High Court of Justice shall be constituted as follows:—The first judges thereof shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the

(*a*) Repealed, Act of 1875, sect. 33, and sched. See sect. 9 of that act, p. 71.

Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, the several Vice-Chancellors of the High Court of Chancery, the judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes, the several puisne justices of the Courts of Queen's Bench and Common Pleas respectively, the several junior barons of the Court of Exchequer, and the judge of the High Court of Admiralty, except such, if any, of the aforesaid judges as shall be appointed ordinary judges of the Court of Appeal. *Act of* 1873, *s.* 5.

Subject to the provisions hereinafter contained, whenever the office of a judge of the said High Court shall become vacant, a new judge may be appointed thereto by her Majesty, by letters patent. All persons to be hereafter appointed to fill the places of the Lord Chief Justice of England, the Master of the Rolls, *the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron* (*b*), and their successors respectively, shall continue to be appointed to the same respective offices, with the same precedence, and by the same respective titles, and in the same manner, respectively, as heretofore. Every judge who shall be appointed to fill the place of any other judge of the said High Court of Justice shall be styled in his appointment "Judge of her Majesty's High Court of Justice," and shall be appointed in the same manner in which the puisne justices and junior barons of the superior courts of common law have been heretofore appointed: *Provided always, that if at the commencement of this act the number of puisne justices and junior barons who shall become judges of the said High Court shall exceed twelve in the whole, no new judge of the said High Court shall be appointed in the place of any such puisne justice or junior baron who shall die or resign while such whole number shall exceed twelve, it being intended that the permanent number of judges of the said High Court shall not exceed twenty-one* (*c*). Future appointments and style, &c. of judges. Continuance of offices of L. C. J. and M. R. *Number of Judges of High Court.*

All the judges of the said court shall have in all respects, save as in this act is otherwise expressly provided, equal power, authority, and jurisdiction; and shall be addressed in the manner which is now customary in addressing the judges of the superior courts of common law. Mode of addressing judges.

The Lord Chief Justice of England for the time being shall be president of the said High Court of Justice in the absence of the Lord Chancellor. President of High Court.

By sect. 100, "Lord Chancellor" includes "Lord Keeper of the Great Seal," as to which see 5 Eliz. c. 18. For the office of Master of the Rolls, see 4 Inst. 82, and 3 Geo. 2, c. 30, which settled the subordination of that officer to the Lord Chancellor. The first Vice-Chancellor was appointed by 53 Geo. 3, c. 24, and two more were appointed by 5 Vict. c. 5, s. 19. The judge of the Court of Probate was first appointed in 1857 by 20 & 21 Vict. c. 77; and by an act of the same year, 21 & 22 Vict. c. 85, such judge is called the Judge Ordinary of the Court of

(*b*) Abolished by Order in Council under sect. 32, *post*, p. 31.
(*c*) Repealed, Act of 1875, sect. 3, p. 66.

*Act of* 1873, *ss.* 5—9.

Divorce. The Lord Chancellor and all the common law judges were also made judges of that court (21 & 22 Vict. c. 85, s. 8; 22 & 23 Vict. c. 61, s. 1). Till 1857 probate and divorce business was transacted in the ecclesiastical courts.

The second paragraph of sect. 5 provides for the continuance of the offices of the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer; but this provision must be read subject to sect. 32, p. 31, *post*, and the order in council thereunder for the abolition of the distinction of offices.

The precedence of the judges of the High Court among themselves is according to the priority of their respective appointments. See sect. 6 of the Act of 1875, p. 68. As to style of judges, see Act of 1877, s. 4, p. 107, *post*.

[**6.** *Constitution of Court of Appeal, as follows:* 5 "*ex officio*" *judges, not more than* 9 "*ordinary*" *judges, and an indefinite number of* "*additional*" *judges; the last named to be appointed by the crown from certain ex-judges willing to serve.* Repealed, Act of 1875, sect. 33, and sched. See now sect. 4 of that act, p. 67, *post*.]

Vacancies by resignation of judges and effect of vacancies generally.

**7.** The office of any judge of the said High Court of Justice, or of the said Court of Appeal, may be vacated by resignation in writing, under his hand, addressed to the Lord Chancellor, without any deed of surrender; and the office of any judge of the said High Court shall be vacated by his being appointed a judge of the said Court of Appeal. The said courts respectively shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any judge of either of such courts.

Qualification of judges.

**8.** Any barrister of not less than ten years standing shall be qualified to be appointed a judge of the said High Court of Justice; and any person who if this act had not passed would have been qualified by law to be appointed a Lord Justice of the Court of Appeal in Chancery, or has been a judge of the High Court of Justice of not less than one year's standing, shall be qualified to be appointed an ordinary judge of the said Court of Appeal: provided, that no person appointed a judge of either of the said courts shall henceforth be required to take, or to have taken, the degree of serjeant-at-law.

Need not be serjeants.

Fifteen years' standing at the bar was the qualification alike for the office of vice-chancellor, under 53 Geo. 3, c. 24, s. 2, and 5 Vict. c. 5, s. 19, of judge of the Court of Probate and Divorce, under 20 & 21 Vict. c. 77, s. 5, and for that of lord justice of appeal in chancery, under 14 & 15 Vict. c. 83. For the judgeships of the common law courts no qualification was required, except they should be serjeants.

[**9.** *Judges to hold their offices for life, &c.* Repealed, Act of 1875, sect. 33, and sched. See now sect. 5 of that act, p. 67, *post*.]

[**10.** *Precedence of judges.* Repealed, Act of 1875, sect. 33, and sched. See now sect. 6 of that act, p. 68, *post.*] *Act of* 1873, *ss.* 10—12.

**11.** Every existing judge, who is by this act made a judge of the High Court of Justice or an ordinary judge of the Court of Appeal, shall, as to tenure of office, rank, title, salary, pension, patronage, and powers of appointment or dismissal, and all other privileges and disqualifications, remain in the same condition as if this act had not passed; and, subject to the change effected in their jurisdiction and duties by or in pursuance of the provisions of this act, each of the said existing judges shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform in pursuance of any act of parliament, law, or custom if this act had not passed. No judge appointed before the passing of this act shall be required to act under any commission of assize, nisi prius, oyer and terminer, or gaol delivery, unless he was so liable by usage or custom at the commencement of this act. Saving for existing judges. No new liability to act under commission of assize, &c.

Service as a judge in the High Court of Justice, or in the Court of Appeal, shall, in the case of an existing judge, for the purpose of determining the length of service entitling such judge to a pension on his retirement, be deemed to be a continuation of his service in the court of which he is a judge at the time of the commencement of this act.

By sect. 100 "existing" means existing at the time appointed for the commencement of the act, *i. e.*, the 1st of November, 1875. See sect. 2 and note, p. 1.

All the existing judges transferred to the High Court, except the Chancery judges, the Admiralty judge and the Probate and Divorce judge, might be required to act under a commission of assize, &c. Neither this section, nor anything else, legally disqualifies the excepted judges from so acting, and the opening clause of sect. 37 would seem to contemplate the possibility of their doing so voluntarily, while the second clause of that section empowers the Queen to include in the commission of assize any judge of the Chancery Division "appointed after the commencement of the act."

**12.** If, in any case not expressly provided for by this act, a liability to any duty, or any authority or power, not incident to the administration of justice in any court, whose jurisdiction is transferred by this act to the High Court of Justice, shall have been imposed or conferred by any statute, law, or custom upon the judges or any judge of any of such courts, save as hereinafter mentioned, every judge of the said High Court shall be capable of performing and exercising, and shall be liable to perform and empowered to exercise every such duty, authority, and power, in the same manner as if this act had not passed, and as if he had been duly appointed the successor of a judge liable to such duty, or possessing such authority or power, before the passing of this act. Any such duty, authority, or power, imposed or conferred by any statute, law, or Duties not incident to administration of justice in old courts.

*Act of* 1873, *ss.* 13, 14.

custom, in any such case as aforesaid, upon the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, *the Lord Chief Justice of the Common Pleas, or the Lord Chief Baron* (*c*), shall continue to be performed and exercised by them respectively, and by their respective successors, in the same manner as if this act had not passed.

Special duties of L. C., L. C. JJ., M. R., and L. C. B.

As to the appointment of sheriffs in the Exchequer, under 14 Edw. 3, see sect. 96. The common law judges were a council belonging to the sovereign (1 Inst. 110; 4 Rep. 56 *a*), and also were bound to advise the House of Lords on points of law. (Steph. Com. iii. 340, 356.) The Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, and all the puisne judges of the Court of Queen's Bench were justices of the peace throughout the kingdom. The barons of the Exchequer and the judges of the Common Pleas were justices of the peace only when sitting in court. (Steph. Com. ii. 643.)

Salaries of future judges.

**13.** Subject to the provisions in this act contained with respect to existing judges, there shall be paid the following salaries, which shall in each case include any pension granted in respect of any public office previously filled by him, to which the judge may be entitled:—

To the Lord Chancellor the sums hitherto payable to him;

To the Lord Chief Justice of England, the Master of the Rolls, *the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer* (*d*), the same annual sums which the holders of those offices now respectively receive;

To each of the ordinary judges of the Court of Appeal; and

To each of the other judges of the High Court of Justice, the sum of five thousand pounds a year.

[*Salary of additional Judges of Court of Appeal.* Repealed, Act of 1875, sect. 33, and sched.]

By 14 & 15 Vict. c. 83, s. 17, there is payable to the Lord Chancellor the net yearly sum of 10,000*l.*, including the sum payable to the Lord Chancellor under 2 & 3 Will. 4, c. 122, as Speaker of the House of Lords. By 14 & 15 Vict. c. 41, the Lord Chief Justice of England receives 8,000*l.*, and the Lord Chief Justice of the Common Pleas received 7,000*l.* By 2 & 3 Will. 4, c. 116, the Lord Chief Baron of the Exchequer received 7,000*l.* By 6 Geo. 4, c. 84, the Master of the Rolls also received 7,000*l.*

Retiring pensions of future judges.

**14.** Her Majesty may, by letters patent, grant to any judge of the High Court of Justice, or to any ordinary judge of the Court of Appeal who has served for fifteen years as a judge in such courts, or either of them, or who is disabled by permanent infirmity from the performance of the duties of his

(*c*) By Order in Council (p. 438, *post*) under s. 32, *post*, p. 31, the duties, &c. of the L. C. J. of the C. P., and of the L. C. B., are transferred to the Lord Chief Justice of England.

(*d*) These offices are abolished by Order in Council (p. 438, *post*) under s. 32, p. 31. *post.*

office, a pension, by way of annuity, to be continued during his life:

Pensions of L. C. J. and M. R.

In the case of the Lord Chief Justice of England, the Master of the Rolls, *the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer* (*d*), the same amount of pension which at present might under the same circumstances be granted to the holder of the same office:

Pensions of other judges.

In the case of any ordinary judge of the Court of Appeal, or any other judge of the High Court of Justice, the same amount of pension which at present might under the same circumstances be granted to a puisne justice of the Court of Queen's Bench.

This section will affect only those judges who shall have served all their time in the new courts. The case of judges who have served any part of their time in the old courts is provided for by sect. 11; the practical effect, however, is exactly the same in both cases.

The title to a pension given by this section is identical with that originally fixed by 39 Geo. 3, c. 110, s. 7, the effect of which enactment, combined with 53 Geo. 3, c. 153; 6 Geo. 4, c. 82, s. 10; c. 83, s. 9, and c. 84, s. 4, is to give the Lord Chief Justice of England a pension of 4,000*l.*, the Master of the Rolls, the Lord Chief Justice of the Common Pleas and the Lord Chief Baron of the Exchequer 3,750*l.* each, and a puisne justice of the Court of Queen's Bench (and also of the Common Pleas or Exchequer) 3,500*l.*

By 2 & 3 Will. 4, c. 111, the pension of the Lord Chancellor was fixed at a maximum of 5,000*l.*

Salaries and pensions of judges, how paid.

**15.** Subject to the provisions in this act contained with respect to existing judges, the salaries, allowances, and pensions payable to the judges of the High Court of Justice, and the ordinary judges of the Court of Appeal respectively, shall be charged on and paid out of the consolidated fund of the United Kingdom of Great Britain and Ireland, or the growing produce thereof: such salaries and pensions shall grow due from day to day, but shall be payable to the persons entitled thereto, or to their executors or administrators, on the usual quarterly days of payment, or at such other periods in every year as the Treasury may from time to time determine.

The salary commences from the date of appointment of the judge, and not, as had in some instances been the case before 1872, from the death or resignation of his predecessor. See the Judges Salaries Act, 1872 (35 & 36 Vict. c. 51).

## Part II.

### *Jurisdiction and Law.*

Jurisdictions transferred to High Court of Justice.

**16.** The High Court of Justice shall be a superior court of record, and, subject as in this act mentioned, there shall be transferred to and vested in the said High Court of Justice the jurisdiction which, at the commencement of this act, was

*Act of* 1873, *s.* 16.

vested in, or capable of being exercised by, all or any of the courts following; (that is to say,)

(1.) The High Court of Chancery, as a common law court as well as a court of equity, including the jurisdiction of the Master of the Rolls, as a judge or master of the Court of Chancery, and any jurisdiction exercised by him in relation to the Court of Chancery as a Common law court;
(2.) The Court of Queen's Bench;
(3.) The Court of Common Pleas at Westminster;
(4.) The Court of Exchequer, as a court of revenue as well as a common law court;
(5.) The High Court of Admiralty;
(6.) The Court of Probate;
(7.) The Court for Divorce and Matrimonial Causes;
(8.) *The London Court of Bankruptcy* (*e*);
(9.) The Court of Common Pleas at Lancaster;
(10.) The Court of Pleas at Durham;
(11.) The Courts created by Commissions of Assize, of Oyer and Terminer, and of Gaol Delivery, or any of such Commissions:

Chambers, &c.

The jurisdiction by this act transferred to the High Court of Justice shall include (subject to the exceptions hereinafter contained) the jurisdiction which, at the commencement of this act, was vested in, or capable of being exercised by, all or any one or more of the judges of the said courts, respectively, sitting in court or chambers, or elsewhere, when acting as judges or a judge, in pursuance of any statute, law, or custom, and all powers given to any such court, or to any such judges or judge, by any statute; and also all ministerial powers, duties, and authorities, incident to any and every part of the jurisdiction so transferred.

A court of record is one, the proceedings in which are enrolled upon records, the truth of which cannot be called in question; whereas the truth of the proceedings of other courts, although recorded, may, if disputed, be tried by a jury. (Steph. Com. iii. 269, ed. 7.) Before the act, the Court of Chancery on the equity side was not a court of record. (4 Inst. 84.) For the power of superior courts of record to commit for contempt, see *R.* v. *Lefroy*, L. R., 8 Q. B. 134, nom. *Ex parte Jolliffe*, 42 L. J., Q. B. 121.

The jurisdiction of the Court of Chancery as a common law court was to repeal the letters patent of the sovereign, when made against law, and generally to entertain the plea of the subject, when the sovereign had been advised to do any act, or had been put in possession of any land or goods, in prejudice of the right of the subject. (Steph. Com. iii. 322, n.) It was also on the common law side of the court that proceedings *de lunatico inquirendo* were taken. As to jurisdiction in lunacy generally, see Act of 1875, sect. 7, p. 69.

The effect of the present section is to allow a judge in Probate to exercise the jurisdiction formerly vested in the Court of Chancery to restrain

(*e*) Repealed, Act of 1875, sect. 33, and sched. 2. See now sect. 9 of that act, p. 71, *post*.

dealings with property. (*Nicholas* v. *Dracachis*, 1 P. D. 72; 45 L. J., P. D. & A. 45.)

*Act of* 1873, *ss.* 16, 17.

The courts numbered 1 to 8 are the same as those enumerated in sect. 3. As to jurisdiction of Master of the Rolls over register of patent proprietors, see *Morgan's Patent, In re*, 24 W. R. 245. Courts 9 and 10 are the superior courts of the "Counties Palatine," so called because the ancient owners of them, the Duke of Lancaster and the Bishop of Durham, had sovereign rights therein. (Steph. Com. i. 129.) All the Common Law Procedure Acts extended to these courts. (See 15 & 16 Vict. c. 76, ss. 229, 230—234; 17 & 18 Vict. c. 125, ss. 100, 101—104, and 23 & 24 Vict. c. 126, ss. 12, 40—42.) The only remaining distinction between them and the courts at Westminster, viz., that the judges of assize who sat in the Palatine Courts sat by special commission, is finally abolished by this section. As to the Court of Chancery of the County Palatine, see 13 & 14 Vict. c. 43, and sect. 17.

Court 11 is composed of two or more commissioners of assize and nisi prius, who derive their authority from 13 Edw. 1, c. 30. For the forms of these commissions, see Chitty's Criminal Law, ch. iv. pp. 128—169.

**17.** There shall not be transferred to or vested in the said High Court of Justice, by virtue of this act,— Jurisdictions not transferred to High Court.

(1.) Any appellate jurisdiction of the Court of Appeal in Chancery, or of the same court sitting as a Court of Appeal in Bankruptcy: Appeal in Chancery.

(2.) Any jurisdiction of the Court of Appeal in Chancery of the county palatine of Lancaster:

(3.) Any jurisdiction usually vested in the Lord Chancellor or in the Lords Justices of Appeal in Chancery, or either of them, in relation to the custody of the persons and estates of idiots, lunatics, and persons of unsound mind: Lunacy.

(4.) Any jurisdiction vested in the Lord Chancellor in relation to grants of letters patent, or the issue of commissions or other writings, to be passed under the Great Seal of the United Kingdom: Letters patent.

(5.) Any jurisdiction exercised by the Lord Chancellor in right of or on behalf of her Majesty as visitor of any college, or of any charitable or other foundation: Visitorial jurisdiction.

(6.) Any jurisdiction of the Master of the Rolls in relation to records in London or elsewhere in England. Records. M. R.

Sub-sects. 1 and 2 relate to jurisdictions transferred by the next section to the Court of Appeal. The subject-matter of sub-sect. 3 is dealt with by sect. 7 of the Act of 1875. The remaining sub-sections relate to ministerial jurisdictions, not affected by the Judicature Acts.

By 14 & 15 Vict. c. 83, the Lord Chancellor with two other judges, styled the Lords Justices, were constituted the Court of Appeal in Chancery, to be capable of exercising all jurisdiction whatsoever theretofore exerciseable by the Lord Chancellor. The appeal in bankruptcy is given by sect. 71 of the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71).

By 17 & 18 Vict. c. 82, the Chancellor of the Duchy and the Lords Justices of Appeal in Chancery were constituted a Court of Appeal in Chancery of the county palatine of Lancaster.

*Lunacy.*] By the still unrepealed statute *de prærogativâ regis*, 17 Edw. 2, stat. 1, which is in affirmance of the common law, the sovereign has the

*Act of* 1873, *ss.* 17, 18.

custody of the estate of lunatics, &c. This custody was in early times deputed to the Lord Chancellor, upon the common law side of whose court proceedings were had upon commission to try whether a person be lunatic or not. (See further sect. 7 of the Act of 1875, p. 69, and note.)

*Rehearing.*] Neither the High Court nor a judge of the High Court has any jurisdiction to rehear; such jurisdiction is entirely vested in the Court of Appeal. (*St. Nazaire Co., In re* (C. A.), 12 Ch. D. 88; 41 L. T. 110; 27 W. R. 854.)

*Records.*] The Master of the Rolls has jurisdiction under sub-sect. 6, to amend a clerical error in a specification of a patent. (*Johnson's Patent, In re*, 5 Ch. D. 503.)

Jurisdictions transferred to Court of Appeal.

**18.** The Court of Appeal established by this act shall be a superior court of record, and there shall be transferred to and vested in such court all jurisdiction and powers of the courts following; (that it is to say,)

Appeal in Chancery.

(1.) All jurisdiction and powers of the Lord Chancellor and of the Court of Appeal in Chancery, in the exercise of his and its appellate jurisdiction, and of the same court as a Court of Appeal in Bankruptcy:

(2) All jurisdiction and powers of the Court of Appeal in Chancery of the county palatine of Lancaster, and all jurisdiction and powers of the chancellor of the duchy and county palatine of Lancaster when sitting alone or apart from the Lords Justices of Appeal in Chancery as a judge of re-hearing or appeal from decrees or orders of the Court of Chancery of the county palatine of Lancaster:

Stannaries.

(3.) All jurisdiction and powers of the Court of the Lord Warden of the Stannaries assisted by his assessors, including all jurisdiction and powers of the said Lord Warden when sitting in his capacity of judge:

Exchequer Chamber.

(4.) All jurisdiction and powers of the Court of Exchequer Chamber:

Privy Council.

(5.) All jurisdiction vested in or capable of being exercised by her Majesty in council, or the Judicial Committee of her Majesty's Privy Council, upon appeal from any judgment or order of the High Court of Admiralty, or from any order in lunacy made by the Lord Chancellor, or any other person having jurisdiction in lunacy.

As to the two first subsections, see note to last section. The Court of Appeal cannot vacate an enrolment of a decree. (*Allan* v. *United Kingdom Telegraph Co.*, 45 L. J., Ch. 366; 34 L. T. 707; 24 W. R. 898.) Nor can it hear an original petition to the Lord Chancellor. (*Dunraven Adare Coal Co., In re*, 33 L. T. 371; 24 W. R. 37.)

The jurisdiction of the Lord Warden, transferred by sub-sect. 3, was an appellate one from the Vice-Warden. See 18 & 19 Vict. c. 32, s. 26, by which certain judges of the superior courts were appointed to act as assessors to the Lord Warden.

*Exchequer Chamber.*] At common law, the Exchequer Chamber was a court of mere debate, into which causes of special difficulties were adjourned for discussion previously to judgments being given upon them in the court below. A similar statutory court was erected by 31 Edw. 3,

c. 12, and 27 Eliz. c. 8, and finally by 11 Geo. 4 & 1 Will. 4, c. 70, s. 8, which last created the Exchequer Chamber of the present section, whose jurisdiction was the revision of the judgments of any of the three Courts of Queen's Bench, Common Pleas and Exchequer by the judges of the other two. See 11 Geo. 4 & 1 Will. 4, c. 70, s. 8; and C. L. P. Act, 1852, ss. 146—167 (error), and C. L. P. Act, 1854, ss. 32—35 (error and appeal).

*Act of* 1873, *ss.* 18, 19.

"*Full Court of Divorce.*"] The Court of Appeal has not the jurisdiction of the "Full Court of Divorce;" appeals arising out of the Matrimonial Causes Acts must still be made to such "Full Court" under 23 & 24 Vict. c. 143, s. 2. (*Westhead* v. *Westhead* (C. A.), 2 P. D. 1; *Gladstone* v. *Gladstone* (C. A.), 2 P. D. 143; 25 W. R. 387; *Wallis* v. *Wallis* (C. A.), 2 P. D. 141; 36 L. T. 161; 25 W. R. 387.) A "Full Court" has up to this time (February, 1881) sat twice since the Judicature Acts.

*Probate Appeals.*] In probate matters there is an appeal to the Court of Appeal. (*Sugden* v. *Lord St. Leonards* (C. A.), 1 P. D. 154; 45 L. J., P. & M. 49; 34 L. T. 369; 24 W. R. 479.)

**19.** The said Court of Appeal shall have jurisdiction and power to hear and determine appeals from any judgment or order, save as hereinafter mentioned, of her Majesty's High Court of Justice, or of any judges or judge thereof, subject to the provisions of this act, and to such rules and orders of court for regulating the terms and conditions on which such appeals shall be allowed, as may be made pursuant to this act.*

Appeals from High Court to Court of Appeal.

[* See p. 256.]

For all the purposes of and incidental to the hearing and determination of any appeal within its jurisdiction, and the amendment, execution, and enforcement of any judgment or order made on any such appeal, and for the purpose of every other authority expressly given to the Court of Appeal by this act, the said Court of Appeal shall have all the power, authority and jurisdiction by this act vested in the High Court of Justice.

*Appeal by Leave.*] The words "shall have jurisdiction and power to hear and determine appeals from any judgment or order of her Majesty's High Court of Justice" have the effect of giving far more extensive rights of appeal than those which prevailed before the act; and sect. 20 of the App. Jur. Act, 1876 (p. 103, *post*), by which it is enacted, that no appeal shall lie in cases "where by act of parliament it is provided that the decision of any court or judge" whose jurisdiction is transferred to the High Court "is to be final," does not impliedly repeal that portion of sect. 45 of the present act which allows appeals with leave. (*Crush* v. *Turner*, 3 Ex. D. 303, and p. 41, *post*.) The two sections read together have the effect of substituting an appeal *by leave* for a *right* of appeal in the following matters:—

On a case stated by justices of the peace under 20 & 21 Vict. c. 43, ss. 2, 6, or the Summary Jurisdiction Act, 1879, in a matter not criminal;

On an appeal from a county court under 13 & 14 Vict. c. 61, s. 14; or 19 & 20 Vict. c. 108, s. 68; or 28 & 29 Vict. c. 29, s. 18 (the County Courts Act, 1875 (38 & 39 Vict. c. 50, s. 6), affecting procedure only);

On a case stated by the Railway Commissioners, under the Railway Regulation Act, 1873 (36 & 37 Vict. c. 48, s. 26).

*No Appeal.*] Judgments and orders expressly excepted, by the present act, from the operation of the present section are:—Appeals from inferior

*Act of* 1873, *s.* 19.

courts by sect. 45, p. 41; determination of criminal matters by sect. 47, p. 42; and orders as to costs by sect. 49, p. 44.

In *The Amstel*, 2 P. D. 186; 47 L. J., P. & M. 11, it was held, that no appeal lay from a refusal to extend the time for appeal under the County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71, s. 27).

An appellant to a divisional court against whom judgment is given by default, has no further right of appeal. (*Walker* v. *Budden* (C. A.), 5 Q. B. D. 267; 49 L. J., Q. B. 159; 28 W. R. 265.)

There is also no appeal in matters coming within s. 20 of the Act of 1876, but not within s. 45 of the present act.

*In what Matters Appeal lies.*] With the exceptions above mentioned, the right of appeal would seem to be general. (See *Walsall Overseers* v. *L. & N. W. Rail. Co.*, 4 App. Cas. at p. 43, and *infra*; *Chennell, In re*, 8 Ch. D. at p. 501.) In Chancery, before the act, there was an appeal on all points from the Vice-Chancellor or Master of the Rolls to the Lord Chancellor. (See 3 Geo. 2, c. 20, as to Masters of the Rolls, and 53 Geo. 3, c. 24, s. 2, and 5 Vict. c. 5, s. 22, as to Vice-Chancellors or Lords Justices; see 14 & 15 Vict. c. 83, s. 11.) In the courts of law it was otherwise, and the section appears to create a new right of appeal from the grant or refusal to grant a writ of prohibition, mandamus, habeas corpus or quo warranto, from the decision of the High Court on appeal from a judge in chambers, and from an order to commit for contempt.

It has been held that an appeal lies from a judgment at the trial of an interpleader issue (*Witt* v. *Parker*, 46 L. J., Q. B. 450; 36 L. T. 538; 25 W. R. 518), from the discharge of a rule (*Walsall Overseers* v. *L. & N. W. Rail. Co.*, 4 App. Cas. 30; 48 L. J., M. C. 65; 39 L. T. 453; 27 W. R. 189) by the Queen's Bench Division for quashing an order of sessions upon a "special case" (*ib.*), and from the decision of the High Court upon a special case stated by an arbitrator under s. 5 of the C. L. P. Act, 1854 (*Bidder* v. *North Staffordshire Rail. Co.*, 4 Q. B. D. 412). In *Hawes* v. *Pavely*, 1 C. P. D. 418; 46 L. J., C. P. 18; 34 L. T. 836; 24 W. R. 895 (where judgment was for the appellant), it was assumed that an appeal lies from the grant of a writ of prohibition to the Mayor's Court; and in *Barton* v. *Titchmarsh*, 42 L. T. 610, it was held, that an appeal lay from a prohibition to a County Court judge.

*Habeas Corpus.*] The appeal of a remanded prisoner was heard in *Pelham Dale's case* (January, 1881), and the act would seem also to give an appeal to a party at whose suit an imprisonment is procured. At the same time the 3rd and 16th sections of the act, by constituting a single court out of many, seem to extinguish the right which a remanded prisoner had before the act (see *Reg.* v. *Baines*, 12 Ad. & E. 232; 1 Cr. & Ph. 31) of applying to one court after another.

The Rules of Court (Ord. LXII., p. 264) provide that the practice in the Crown Office is to remain unaffected; but it is conceived that such a provision cannot affect the substantive right of appeal under the present section, which allows rules of court to regulate the terms of appeal, not the matters on which appeal is to be allowed.

*Agreement not to Appeal.*] For instance of appeal allowed where undertaking not to appeal, see *Hull and County Bank, In re* (C. A.), 13 Ch. D. 201, where the undertaking was not embodied in the order of the court below, and for instance of appeal excluded by agreement not to bring error, see *Jones* v. *Victoria Graving Dock Co.*, 2 Q. B. D. 314, where the agreement was embodied in a consent order of reference.

*Inrolment.*] Enrolment is now practically abolished, as it will not prevent an appeal to the Court of Appeal (*Hastie* v. *Hastie* (C. A.), 2 Ch. D. 304; 45 L. J., Ch. 288; 34 L. T. 13), except as to decrees made before 2nd November, 1875 (see *Cope* v. *De La Warr*, 5 Ch. D. 666), or decrees under special statutes, *e. g.*, the Railway Companies Act, 1867, or Irish decrees under 41 Geo. 3, c. 90, s. 6. The effect of enrolment was to make a decree of the M. R. or V.-C., a decree of the Lord Chancellor, and so prevent an appeal to the Lords Justices, and obtain one to the House of Lords direct. (Seton on Decrees, 4th ed., vol. 2, p. 1550.)

[**20.** *No appeal to House of Lords or to Privy Council.* Suspended until 1st of November, 1876, by sect. 2 of the Act of 1875. Repealed by sect. 24 of App. Jur. Act of 1876. See now sect. 3 of that act, p. 194, *post.*]

[**21.** *Transfer to Court of Appeal of Appeals from Judicial Committee of Privy Council—Ecclesiastical Appeals.* Suspended until 1st of November, 1876, by sect. 2 of the Act of 1875. Repealed by sect. 24 of App. Jur. Act of 1876. See now sect. 14 of that act, p. 98, *post.*]

Cesser of jurisdiction of old courts.

**22.** From and after the commencement of this act the several jurisdictions which by this act are transferred to and vested in the said High Court of Justice and the said Court of Appeal respectively shall cease to be exercised, except by the said High Court of Justice and the said Court of Appeal respectively, as provided by this act; and no further or other appointment of any judge to any court whose jurisdiction is so transferred shall be made except as provided by this act: Provided that in all causes, matters, and proceedings whatsoever which shall have been fully heard, and in which judgment shall not have been given, or having been given shall not have been signed, drawn up, passed, entered, or otherwise perfected at the time appointed for the commencement of this act, such judgment, decree, rule, or order may be given or made, signed, drawn up, passed, entered, or perfected respectively, after the commencement of this act, in the name of the same court, and by the same judges and officers, and generally in the same manner, in all respects as if this act had not passed; and the same shall take effect, to all intents and purposes, as if the same had been duly perfected before the commencement of this act; and every judgment, decree, rule or order of any court whose jurisdiction is hereby transferred to the said High Court of Justice or the said Court of Appeal, which shall have been duly perfected at any time before the commencement of this act, may be executed and enforced, and, if necessary, amended or discharged by the said High Court of Justice and the said Court of Appeal respectively, in the same manner as if it had been a judgment, decree, rule, or order of the said High Court or of the said Court of Appeal; and all causes, matters, and proceedings whatsoever, whether civil or criminal, which shall be pending in any of the courts whose jurisdiction is so transferred as aforesaid at the commencement of this act, shall be continued and concluded as follows (that is to say), in the case of proceedings in error or on appeal, or of proceedings before the Court of Appeal in Chancery, in and before her Majesty's Court of Appeal; and, as to all other proceedings, in and before her Majesty's High Court of Justice. The said courts respectively shall have the same jurisdiction in relation to all such causes, matters, and proceedings as if

Causes heard but not concluded, to be unaffected.

Enforcement of judgments.

Causes pending to be transferred.

*Act of* 1873, *s.* 22.

Discretion of court as to manner of procedure.

the same had been commenced in the said High Court of Justice, and continued therein (or in the said Court of Appeal, as the case may be) down to the point at which the transfer takes place; and, so far as relates to the form and manner of procedure, such causes, matters, and proceedings, or any of them, may be continued and concluded, in and before the said courts respectively, either in the same or the like manner as they would have been continued and concluded in the respective courts from which they shall have been transferred as aforesaid, or according to the ordinary course of the said High Court of Justice and the said Court of Appeal respectively (so far as the same may be applicable thereto), as the said courts respectively may think fit to direct.

*Pending Business.*] The result of the proviso down to the first period seems to be that where, in any proceeding pending in one of the old courts the hearing has been concluded, but judgment has not been perfected, the final step is to be taken in the name of the old court; but that where there has been no complete hearing the proceeding is to be continued in the new court. The difficulty arises from the assumption that all proceedings are "fully heard" before judgment, omitting the consideration of judgment by default. The intention seems to have been that in cases of *cur. adv. vult* the judgment when delivered should be considered the judgment of the old court, not of the new. Except in such cases it would seem that documents relating to pending business filed or delivered after the commencement of the act should be entitled in the new court.

Where amendments of substantive law have been made by the act, and particularly by sect. 25, pending business is to be governed by the old law and not by the new. (*Phœnix Bessemer Steel Co., In re*, 45 L. J., Ch. 11; 33 L. T. 403; 24 W. R. 19; and see sect. 10 of the Act of 1875, *post*.) Where no appeal has been brought before the act, the appellant must proceed under the new practice. (*Bartlam* v. *Yates* (C. A.), 1 Ch. D. 13; 33 L. T. 338; 24 W. R. 19.)

The following orders under this section were issued shortly after the act came into operation:—

"The Master of the Rolls directs that, subject to any special order which may be made in any cause, matter, or proceeding pending in his court on the 1st of November, 1875, the following course of procedure shall be adopted:

"That all causes, matters and proceedings, except causes (not being short causes) in which neither notice of motion for a decree had been served, nor replication been filed before the 1st of November, 1875, shall, so far as relates to the form and manner of procedure, be continued and concluded in the same manner as they would have been in the High Court of Chancery.

"That all such pending cases (not being short causes) in which, up to the 1st November, 1875, no notice of motion for a decree had been served, or replication filed, shall be continued in the same manner as they would have been continued in the High Court of Chancery up to the time at which such notice of motion or replication would have been served or filed, and shall from that period be continued according to the ordinary course of the High Court of Justice.

"That any party to a pending cause may apply by summons at chambers that, for special reasons, a direction may be given for continuing such cause according to the ordinary course of the High Court of Justice."

Similar orders were made by the Vice-Chancellors.

The following order was issued in the chambers of the Queen's Bench, Common Pleas and Exchequer Divisions:—

"In order to save the expense and inconvenience of separate applications for directions as to the form and manner of procedure in actions com-

*Act of* 1873, *ss.* 22—24.

menced before the 1st of November inst., the judge sitting at chambers hereby directs: 1. That where no declaration has been delivered the action shall be continued according to the ordinary course of the High Court of Justice as if it had been commenced in that court. 2. That in all other cases the action shall be continued up to the close of the pleadings according to the practice of the court in which it was brought, and afterwards according to the provisions of the Judicature Act, subject, however, to an order, at the instance of either party, to proceed at any stage, according to the course prescribed by those acts. By order. Judges Chambers, Nov. 2, 1875."

The direction to continue pending proceedings under the new practice will not be given on an ex parte application. (*Perkins* v. *Slater*, 1 Ch. D. 83; 45 L. J., Ch. 225; 24 W. R. 39, per Hall, V.-C.)

By sect. 34, all causes and "matters" (*i. e.* all proceedings not in a cause) pending in the old courts at the commencement of the acts are assigned to the particular divisions representing those courts respectively; causes pending in the Court of Chancery at the commencement of the act being assigned to the Chancery Division, and so on; and by sect. 42 causes pending in the Court of Chancery, the Court of Probate and Divorce, and the Court of Admiralty, "shall (subject to the power of transfer) be assigned to the same judge in or to whose court the same may have been depending or attached at the commencement of the act."

Jurisdiction of Supreme Court.

Maintenance of old procedure.

**23.** The jurisdiction by this act transferred to the said High Court of Justice and the said Court of Appeal respectively shall be exercised (so far as regards procedure and practice) in the manner provided by this act, or by such rules and orders of court as may be made pursuant to this act; and where no special provision is contained in this act or in any such rules or orders of court with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the respective courts from which such jurisdiction shall have been transferred, or by any of such courts.

The future rules of court will be made pursuant to the Act of 1875, sect. 17 (substituted for the repealed sect. 68 of this act, to which the present section has reference), as amended by the App. Jur. Act of 1876, sect. 17.

For a further saving of the old practice where not altered by the new, see sect. 21 of the Act of 1875 (p. 79), and particularly the preliminary note to the first schedule to the Act of 1875 (p. 122), which declares that where no other provision is made by the act or the rules in that schedule, "the present procedure and practice remain in force." For the application of statutes relating to the old courts, see sect. 76 of the present Act (p. 51).

Law and equity to be concurrently administered.

**24.** In every civil cause or matter commenced in the High Court of Justice law and equity shall be administered by the High Court of Justice and the Court of Appeal respectively according to the rules following:—

Equitable claims.

(1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given

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by a court of equity, the said courts respectively, and every judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court of Chancery, in a suit or proceeding for the same or the like purpose properly instituted before the passing of this act.

Equitable defence.

(2.) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said courts respectively, and every judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that court for the same or the like purpose before the passing of this act.

Counter-claims.

(3.) The said courts respectively, and every judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said courts respectively, or any judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any rule of court* or any order of the court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim, as if he had been duly sued in the ordinary way by such defendant.

Relief against third parties.

Notice.

* Ord. XVI., Rules 17—21, p 158, *post*.

Incidental equities.

(4.) The said courts respectively, and every judge thereof, shall recognize and take notice of all equitable es-

tates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognized and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this act. *Act of* 1873, s. 24.

(5.) No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always, that nothing in this act contained shall disable either of the said courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this act had not passed, to apply to any court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for the purposes of justice; and the court shall thereupon make such order as shall be just. Prohibition—injunction. Stay of proceedings.

(6.) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this act, the said courts respectively, and every judge thereof, shall recognize and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the common law or by any custom, or created by any statute, in the same manner as the same would have been recognized and given effect to if this act had not passed by any of the courts whose jurisdiction is hereby transferred to the said High Court of Justice. Legal rights.

(7.) The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this act in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, Finality of proceedings.

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all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

*General object of sect.* 24.] The main object of sect. 24 is to give to the Supreme Court formal "livery of seisin" of the subject-matters over which the jurisdiction of the old courts has been already transferred to it by sect. 16. That section effects the transfer generally, and this section provides for the administration of the different jurisdictions according to one system. The Supreme Court, although partly representing courts hitherto courts of law, is to administer all equity; and although partly representing courts hitherto courts of equity, is to administer all law. Such processes as prohibition and injunction, by means of which certain of the old courts used to exercise control over certain other of the old courts, are abolished by sect. 24, the difficulty of conflicting principles in the systems being left to be solved by sect. 25. The sub-sections of sect. 24 follow one another with great logical precision. The first treats of equitable claim; the second of equitable defence; the third of counter-claim by a defendant; the fourth of equities incidental to a cause; the fifth deals with the abolition of prohibition and injunction; the sixth takes up common law, and provides for effect being given to it, except where modified or interfered with by equity; the seventh empowers the court to combine generally in its decree all remedies, whether legal or equitable, to which the parties have laid claim.

*Equitable defence* (*sub-sect.* 2).] A doubt has arisen (see Haynes' Judicature Act, p. xii) whether sub-sect. 2 succeeds in giving a defendant a right to equitable relief in all actions, and is not confined to cases where the claim against him might have been instituted in the Court of Chancery. The defect, however, if any, would seem to be cured by sub-sect. 5, which provides that "every matter of equity * * * may be relied on by way of defence." But the words "relied on by way of defence" in sub-sect. 2 itself grammatically include the case of a defendant in a court of law applying for an injunction to a court of equity, as well as the case of a defendant in a court of equity; and the whole scheme of the act points to the more liberal construction. As to the effect of the sub-section of dispensing with what would have been before the act, a "cross bill," see *Eyre* v. *Hughes*, 2 Ch. D. 148; 45 L. J., Ch. 395; 34 L. T. 211; 24 W. R. 597.

*Counter-claim* (*sub-sect.* 3).] The extensive powers of giving relief to a defendant, conferred upon the court by sub-sect. 3, are purely discretionary. They are exerciseable in the defendant's favour (1) as against the plaintiff; (2) as against a co-defendant; and (3) as against a third party who has been served with notice. In each case the exercise of the power is subject to two conditions—(1) that the relief should have been "properly claimed" by the pleading, and (2) that the relief prayed might have been granted if the defendant had been himself a plaintiff. As to claims against a co-defendant or third parties, there is a further condition that the relief should "relate to or be connected with the original subject of the cause or matter." It has been left to the court to apply this comprehensive condition. A simple case in which it would seem intended that the power should be exercised is that of a bond with a joint and several liability of the persons sued as sureties. For rules of court as to claims against third parties, see Ord. XVI., r. 17—20,

p. 158, *post*. These rules do not enable one defendant to obtain relief against his co-defendant without an independent action against him. Rules of court to that effect would have been within the powers of the act, but the judges did not think it advisable to make them. (*Treleven* v. *Bray* (C. A.), 1 Ch. D. 176; 45 L. J., Ch. 113; 33 L. T. 827; 24 W. R. 198.)

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The apparently unlimited extension of the law of set-off, which is effected by sub-sect. 3, is more fully stated in Ord. XIX., r. 3, p. 164, *post*.

*Incidental Equitable Rights* (*sub-sect.* 4).] Sub-sect. 4 is imperative. The substitution of "would have recognized" for "ought to have recognized," which are the words in the similarly concluding paragraph of sub-sect. 1, is noticeable; but it would seem that both expressions are intended to have the same effect, and that the difference in the wording was unintentional. It is conceived that the equitable position of parties not before the court would be recognized under this sub-section. It would, however, be no more than recognized: an equitable right could not be substantiated without the party himself coming before the court, much less could an equitable duty be enforced without the conditions precedent mentioned in sub-sect. 3.

*Prohibition and Injunction* (*sub-sect.* 5).] Prohibition and injunction were processes by which certain of the now consolidated courts acted upon certain others, but which the new scheme of consolidation renders unnecessary. Prohibition is also directed to the judge and parties to a suit in any inferior court, commanding them to cease from prosecuting the suit on the ground that it is not within the cognizance of that court, but of some other. (See *James* v. *London and South Western Railway Company*, L. R., 1 Ex. 187.)

*Winding-up, &c.*] If an action be brought against a company or executors after a winding-up or administration order, the judge in whose court the winding-up or administration is pending may transfer such action to his own court. (Ord. LI., r. 2*a*, p. 241, *post*.)

*In whom Jurisdiction to stay.*] The general rule under this sub-section is that it is only the judge in whose court an action is brought who has jurisdiction over it, either to stay proceedings, or to allow an equitable defence to be pleaded. So it was decided by the Court of Appeal after conflicting decisions by various divisions of the High Court (*Kingchurch* v. *People's Gardens Co.*, 1 C. P. D. 45; *Re People's Gardens Co.*, 1 Ch. D. 44; *Walker* v. *Banagher Distillery Co.*, 1 Q. B. D. 129; *Needham* v. *Rivers Protection, &c. Co.*, 1 Ch. D. 253) in *Garbutt* v. *Fawcus*, 1 Ch. D. 155; 45 L. J., Ch. 133; 33 L. T. 617; 24 W. R. 89; and to this general rule there is no exception, either, for instance, to stay execution on an award (*Powell* v. *Jewsbury*, 9 Ch D. at p. 49), or to appoint a new trustee for a married woman in lieu of a trustee refusing to continue acting in interpleader proceedings (*Wright* v. *Redgrave* (C. A.), 10 Ch. D. 24; 40 L. T. 206; 27 W. R. 562).

*Stay pending Action in another Division.*] In *Crowle* v. *Russell* (4 C. P. D. 186), the Court of Appeal set aside an order of the C. P. D. to stay an action in that division for recovery of mortgaged hereditaments until an administration action in the Chancery Division to wind up the estate of a deceased person, whose executor was the mortgagor, should be concluded.

*Stay upon Compromise.*] The court has jurisdiction to stay an action proceeded with in repudiation of a compromise. (*Eden* v. *Naish*, 7 Ch. D. 781; 47 L. J., Ch. 325.)

Of the courts now united into the Supreme Court, the Court of Admiralty and the Courts of Probate and Divorce were inferior courts, and a writ of prohibition lay to them from the Courts of Chancery, Queen's Bench, Common Pleas and Exchequer.

*Prohibition to Inferior Courts.*] Prohibition will, of course, still lie to such inferior courts as the mayor's court and the county courts, the

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jurisdiction of which, in that respect, is unaffected by the present act, and will now issue to such courts from the High Court of Justice. It is not assigned by the act or by rules of court to any particular division of the court. The effect of sect. 19 would seem to be to give an appeal in cases of prohibition to inferior courts. (See that section and note, p. 12; and as to prohibition to the mayor's court, see *Worthington* v. *Jeffries*, L. R., 10 C. P. 379; 32 L. T. 606; *Hawes* v. *Pavely* (C. A.), 1 C. P. D. 418; 46 L. J., C. P. 18; 34 L. T. 836; 24 W. R. 895.)

*Injunction.*] The main distinction between prohibition and injunction was that injunction lay, not to a court, but to a party taking proceedings in a court. Injunction, in the sense in which it is spoken of in sub-sect. 5, issued from the Court of Chancery and the Court of Bankruptcy only, and it issued in respect of any proceedings in a court of common law. Thus, it was granted either to stay trial, or judgment, or execution; or, if execution had been effected, to stay the money in the hands of the sheriff; or, if part only of the judgment had been levied by a *fi. fa.*, to restrain the suing out of another. (See 2 Story, 870, and the cases there cited.) It was often a consideration with the Court of Chancery, upon an application for an injunction, whether, although the applicant shewed an equitable right, it was, under the circumstances, proper that the injunction should issue. Considerations of this kind will henceforth be no longer applicable, as the equitable claim will be urged by way of defence before one and the same court. The sole question for the court to determine now would seem to be, whether the equitable ground relied on by way of defence is or is not well founded. The words "either unconditionally or on any terms or conditions" are intended to obviate the construction put on sect. 83 of the C. L. P. Act, 1854, allowing equitable pleas, in such cases as *Mines Royal Societies* v. *Magnay*, 10 Ex. 489; and *Wodehouse* v. *Farebrother*, 5 E. & B. 277; 25 L. J., Q. B. 18.

*Injunction by Court of Bankruptcy.*] The power of the Court of Bankruptcy to grant an injunction, restraining actions in the Superior Courts, given by the 13th section of the Bankruptcy Act, 1869, survives to that court. (*Ex parte Ditton* (C. A.), 1 Ch. D. 557; 45 L. J., Bank. 87; 34 L. T. 109; 24 W. R. 289.)

*Finality of Proceedings, sub-sect.* 7.] A general administrator, and not merely an administrator *ad litem*, is still required to represent the estate in an administration action. (*Dowdeswell* v. *Dowdeswell* (C. A.), 9 Ch. D. 294; 38 L. T. 828.)

Amendment and declaration of law.

**25.** And whereas it is expedient to take occasion of the union of the several courts whose jurisdiction is hereby transferred to the said High Court of Justice to amend and declare the law to be hereafter administered in England as to the matters next hereinafter mentioned: be it enacted as follows:

(1.) [*Administration of insolvent estates. Adoption of Court of Bankruptcy Rules as to rights of secured and unsecured creditors.* Repealed by sect. 10 of Act of 1875. See that section and note, p. 72.]

Statutes of Limitation.

(2.) No claim of a cestui que trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any statute of limitations.

Equitable waste.

(3.) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.

(4.) There shall not, after the commencement of this act, be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity. *Act of* 1873, *s.* 5. Merger.

(5.) A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person. Suits for possession of land by mortgagors.

(6.) Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this act had not passed), to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the acts for the relief of trustees. Assignment of debts and choses in action. Interpleader.

(7.) Stipulations in contracts, as to time or otherwise, which would not before the *passing* (*f*) of this act have been deemed to be or to have become of the essence of such contracts in a court of equity, shall receive Stipulations not of the essence of contracts.

(*f*) Now commencement, *i.e.* 1st November, 1875; see Act of 1875, s. 10, p. 72.

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in all courts the same construction and effect as they would have heretofore received in equity.

Mandamus. Injunctions. Receivers.

See Ord. LII., Rule 4.

(8.) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the court in all cases in which it shall appear to the court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.

Injunction, whether possession or not.

Collisions of ships.

(9.) In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the Court of Admiralty, so far as they have been at variance with the rules in force in the Courts of Common Law, shall prevail.

Infants.

(10.) In questions relating to the custody and education of infants the rules of equity shall prevail.

General prevalence of equity.

(11.) Generally in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.

*General object of sect.* 25.] This section (for a dissertation on which see Trower's "Prevalence of Equity") proceeds with the scheme of fusion begun in sects. 16 and 24, and completes that scheme by laying down certain uniform rules upon points of substantive law upon which the old courts had been governed by conflicting principles.

In construing the sub-sections relating to particular subjects, it may be laid down generally that where the rule expressly provided by the act is less extensive than the former rule of the system from which it is borrowed, such rule must be taken to be modified to the extent indicated by each sub-section itself. Upon any other construction of the rules provided in the section they are not in the words of the preamble a "declaration" of the law, that is, an exposition of the whole rule of law with which they profess to deal; and if the result effects a change in a rule of equity, which in an act dealing mainly with procedure and professing to recognize the superior claims of equity may be unexpected, one of the "amendments" contemplated by the preamble must be considered to have been made.

*Administration of Insolvent Estates.*] The suspension of this act by the Act of 1874 until November, 1875, prevented the present section from coming into operation on the passing of this act, *i. e.* on the 5th August,

1873. (*Sherwin* v. *Selkirk* (C. A.), 12 Ch. D. 68; 40 L. T. 701; 27 W. R. 842; overruling *Hilton* v. *Jones*, 9 Ch. D. 620.)

*Act of* 1873, s. 25.

*Statutes of Limitation* (*sub-sect.* 2).] The rule contained in sub-sect. 2 is confined to express trusts. The rule in equity was not so limited; for instance, a guardian in possession of an infant's real estate has not been allowed to take the benefit of the Statutes of Limitation. (*Thomas* v. *Thomas*, 2 Kay & Johns. 79.) The rule in cases of implied trust must now, it would seem, be taken to be rescinded; and it was probably for this purpose that a special sub-section was devoted to the subject, instead of leaving it to the general operation of sub-sect. 11.

*Equitable Waste* (*sub-sect.* 3).] The description of waste known as equitable waste consists of the destruction of a mansion house and the cutting down of timbers planted for ornament or shelter. (*Micklethwaite* v. *Micklethwaite*, 1 De G. & J. 504; and see *Baker* v. *Sebright*, 13 Ch. D. 179; 49 L. J., Ch. 65; 41 L. T. 614; 28 W. R. 177.) Where waste of this kind was committed, even by a tenant without impeachment of waste, the courts of equity were in the habit of interfering by an injunction to restrain the tenant, or by making him account for the proceeds of the act of waste to the remainderman. (See *Marquis of Downshire* v. *Lady Sandys*, 6 Ves. 109; *Burgess* v. *Lamb*, 16 Ves. 174.) The doctrine of equitable waste applies to other cases besides that of a tenant for life, such as the case of a devisee subject to an executory devise over, and the case of a parson. Sub-sect. 3, however, does not profess to lay down a complete rule as to equitable waste, so that sub-sect. 11 would seem to apply to the cases for equitable interference not indicated by sub-sect. 3. The instrument referred to may be dated either before or after the passing of the act.

*Merger* (*sub-sect.* 4).] Sub-sect. 4 applies only to cases occurring after the commencement of the act, because up to that time conveyancers would treat estates as merged at law. Where a merger takes place before the commencement of the act, the beneficial interest will be kept up by the operation of sub-sect. 11. According to the legal doctrine of merger, where two estates coincide in one and the same person, the preceding estate is merged in the subsequent. The position of merger in equity is thus stated in Burton's Real Property, 8th edition: "A less estate may be merged in a greater, as at law, though not if there be any consequent inconvenience, and whenever an equitable estate becomes united in the same hands, with an exactly coinciding legal estate, the former is extinguished." When the estates are not held in the same right, there is no merger either at law or in equity, unless, it is said, where the tenant takes one of the estates by his own act, and in that case there is no merger in equity. (*Phillips* v. *Phillips*, 1 P. Wms. 41.)

*Suit by Mortgagor* (*sub-sect.* 5).] Sub-sect. 5 declares, and partly amends, the law respecting the right of a mortgagor to sue. So long as he was in possession, or allowed by the mortgagee to receive the rents, the mortgagor might sue in trespass, or for recovery of rent, but the mortgagee might at any time give notice to the tenants to pay rent to him, and enter into possession himself. Sub-sect. 5 extends the rule in favour of the mortgagor to the action for recovery of land, in which possession is sued for. In such an action, it was hitherto impossible for a mortgagor to recover, as the legal title was in the mortgagee. The "notice of intention" seems meant to be given by the mortgagee to the person in actual possession as heretofore, and not necessarily to the mortgagor.

*Assignment of Chose in Action* (*sub-sect.* 6).] It is a well-known rule of common law that no possibility, right, title or thing in action can be granted to third persons, the reason being the preventing of litigation. The rule, however, had three exceptions, (1) that the sovereign might assign a chose in action, (2) in favour of negotiable instruments, such as bills of exchange, and (3) where the debtor assented. (See Story, 2 Eq. 1039; *Crowfoot* v. *Gurney*, 9 Bing. 372.)

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The definition of a chose in action is where a man has not the enjoyment, either actual or constructive, of the thing in question, but merely a right to recover it by a suit or action at law. Thus money due on a bond, or damages payable for a breach of covenant, are equally choses in action. The right to them subsists, but proceedings at law may be requisite in order to reduce them into possession. The words debt or other legal chose in action do not comprehend all the possibilities assignable in equity, a collection of which may be found in Story, 2 Eq. 1039.

The proviso of this sub-section applies only to debts of which there has been an assignment *in writing* (*Sutton's Trusts, In re*, 12 Ch. D. 175; 48 L. J., Ch. 350; 27 W. R. 529); but a claimant petitioning under the Trustee Relief Act for payment out of court cannot object that the payment in was wrong. (*Ib.*)

It may be argued that the enlarged rule of equity on this head is still maintained by the effect of sub-sect. 11; but sub-sect. 6 has all the appearance of an exhaustive rule of the law of assignment of choses in action. While, on the one hand, it narrows the rule formerly obtaining in equity in some respects, it appears to extend it to all kinds of choses in action, whether considered assignable in equity or not. There seems, in theory, no reason why, if a man has been libelled or assaulted, he should not under this sub-section assign his right to damages, and, notice being given to the defendant, the assignee bring the action in his own name. As to interpleader, see Ord. I., Rule 2, p. 123, and "Incorporated Statutes," *post*.

The acts for the relief of trustees are 10 & 11 Vict. c. 96; 12 & 13 Vict. c. 74; and 22 & 23 Vict. c. 35. See Chitty's Statutes, vol. vi. tit. Trustees.

The words "if he think fit" seem to give an absolute right to the debtor, &c. to exercise the option given. (Per Lindley, J., *ex rel. am.* in *Lacey* v. *Wieland*, Jan. 15th, 1876.)

*Stipulations as to time, &c.* (*sub-sect.* 7).] "Time," says Story, 2 Eq. 776, "is not generally deemed in equity to be of the essence of the contract, unless the parties have expressly so treated it, or it necessarily follows from the nature and circumstances of the contract." The doctrine, he adds in a note, was formerly carried to an extravagant extent in favour of relief, but in recent times courts of equity have endeavoured to restrain it within very moderate limits. The nearest approach to a principle, as elicited from the decisions by Alderson, B., in *Hipwell* v. *Knight* (1 Y. & C. 415), and cited with approval by Story, is: "To examine the contract, not merely as a court of law, to ascertain what the parties have in terms expressed to be the contract, but what is in truth the real intention of the parties, and to carry that into effect." In the case of a mortgage, or sale of an estate, therefore, the particular day named is merely formal. On the other hand, if the thing sold be of greater or less value according to the effluxion of time, it is manifest that time is of the essence of the contract; and a stipulation as to time must then be literally complied with in equity, as well as in law. The cases of the sale of stock and of a reversion are instances of this. *Ib.*

*Mandamus, injunction, receiver* (*sub-sect.* 8).] The first part of sub-sect. 8, relating to interlocutory orders for a mandamus, injunction or receiver, seems intended to group conveniently under one head a set of analogous remedies. Mandamus and injunction were obtainable at common law; the appointment of a receiver was an equitable remedy only. The last part of the sub-section applies to quia timet injunctions, and seems intended to disembarrass the court of certain distinctions as to possession and otherwise, by which the Court of Chancery had been hitherto limited. (See *Stanford* v. *Hurlstone*, L. R., 9 Ch. 116. See further Ord. LII., Rule 4, and notes, p. 243, *post*).

There is a preponderance of indirect authority that the prerogative writ of mandamus—by which a public body is commanded, after demand and refusal to perform a duty—can still be granted by the Queen's Bench Division alone under sect. 34, *post*. (See *Glossop* v. *Heston, &c. Board*

(C. A.), 12 Ch. D. 102; 48 L. J., Ch. 736; 40 L. T. 736; 28 W. R. 111; *Paris Skating Rink Co., In re*, 6 Ch. D. 731.

The principles on which injunctions are granted are not altered by the act, although the powers of the court are enlarged. (*Gaskin* v. *Balls*, 13 Ch. D. 324.) An injunction has been granted to restrain an arbitrator from proceeding, on the ground of partiality (*Beddow* v. *Beddow*, 9 Ch. D. 89; 47 L. J., Ch. 588; 26 W. R. 570, per Jessel, M. R.); to restrain a distress for rent, on payment of rent into court, until a special case determining the right to the rent should be heard (*Shaw* v. *Earl of Jersey* (C. A.), 4 C. P. D. 359; 48 L. J., C. P. 308; 28 W. R. 142); to restrain the publication of a libel injurious to plaintiff's trade, without waiting for the finding of the jury that the writing complained of was libellous (*Thorley's Cattle Food Co.* v. *Massam* (C. A.), 14 Ch. D. 763; *Thomas* v. *Williams*, *ib.* 864, per Fry, J.); and to restrain a municipal corporation from declaring void an office held by the plaintiff. (*Aslatt* v. *Corporation of Southampton*, 16 Ch. D. 143, per Jessel, M. R.) An injunction may be granted to restrain the commission of a wrong—*e.g.* a breach of copyright, although a special penalty be imposed by statute. (*Cooper* v. *Whittingham*, 15 Ch. D. 501.) As to obligation to grant injunction in aid of legal right, see *Fullwood* v. *Fullwood*, 9 Ch. D. 176.

As to notice of injunction by telegram, see *Langley*, *Ex parte* (C. A.), 13 Ch. D. 110.

For appointment of receiver in an Admiralty co-ownership action, see *The Ampthill*, 5 P. D. 224.

The words "interlocutory order" are not confined to an order between writ and judgment, but include any order, though after judgment, which is not equivalent to a final judgment; so that a receiver of lands in which a judgment debtor has an equity of redemption may be appointed in the action which resulted in his being judgment debtor. (*Smith* v. *Cowell* (C. A.), 6 Q. B. D. 75.

*Collision of ships* (*sub-sect.* 9).] At common law, according to the general rule of contributory negligence, if two ships came into collision through the fault of both, neither could recover damages from the other. In the Court of Admiralty each ship would recover from the other half its own damage, and be liable to pay compensation for half the damage of the other. Thus, if two ships, one worth 10,000*l.* and the other worth 5,000*l.*, should be lost by collision through a common fault, the owners of the smaller ship would have to pay to the owners of the larger 2,500*l.*

*Infants* (*sub-sect.* 10).] At common law the father was considered absolutely entitled to the custody of his children up to the age of sixteen. (See *R.* v. *Howes*, 7 Jur., N. S. 22. So strict was this rule that it was held to be contrary to public policy, and ineffectual, for a father to agree not to exercise his paternal rights. (See *In re Andrews*, L. R., 8 Q. B. 153; 30 L. T. 355.) The Court of Chancery on the other hand, besides having a special jurisdiction (as to which, see *Re Taylor*, 4 Ch. D. 157) conferred on it by 36 Vict. c. 12 (which repeals, but re-enacts and extends 2 & 3 Vict. c. 54), to give the custody of children under sixteen to the mother, held generally that the rights of the father are subject to the interests of the children. (*Swift* v. *Swift*, 30 L. J., Ch. 209; 11 Jur., N. S. 458; 12 L. T. 436; *Andrews* v. *Salt*, L. R., 8 Ch. App. 622; 30 L. T. 686.) Acting on this principle, the Court of Chancery has removed children from the custody of the father on the ground of his gross ill-treatment (*Whitfield* v. *Hales*, 12 Ves. 492), or his general immorality (*Swift* v. *Swift*, *ubi sup.*). It is doubtful how far the jurisdiction of the Court of Chancery is independent of any question of property. (See *Wellesley* v. *Duke of Beaufort*, 2 Russ. 20.) In practice it is usual to get over any difficulty of this kind by making the infant a ward of court in respect of a nominal sum. "The wardship of infants and the care of infants' estates" are assigned to the Chancery Division by sect. 34, and the jurisdiction of the Lord Chan-

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cellor, as representing the sovereign as *parens patriæ*, is limited by sub-sect. 3 of sect. 17 to lunatics, &c. For a refusal of a habeas corpus in pursuance of this sub-section, see *Re Goldsworthy*, 2 Q. B. D. 75; 46 L. J., Q. B. 187.

*General conflict between Common Law and Equity* (*sub-sect.* 11).] After the cases of conflict specially provided for, whether by way of example or for the purpose of amending the law, sub-sect. 11 provides generally that the rules of equity shall prevail over the rules of law. Under this provision an executor may prefer one creditor by paying him in full with notice of and at any time after an administration action and before judgment (*European Assurance Society* v. *Radcliffe*, 7 Ch. D. 733), and is not liable for the loss of assets which have come to his hands except in case of wilful default. (*Job* v. *Job*, 6 Ch. D. 562.)

This sub-section has also been construed so as to apply generally the rule of equity that an order for changing a solicitor shall be made without providing for his costs, as was the practice at common law before the act (*Grant* v. *Holland*, 3 C. P. D. 180; 47 L. J., C. P. 518; 26 W. R. 742); but in *Newbiggin-by-the-Sea Gas Co.* v. *Armstrong*, 13 Ch. D. 310, and p. 80, a common law rule was followed in preference to the equity practice by the Court of Appeal, and the better opinion is that the sub-section does not apply to mere rules of practice.

## PART III.

### *Sittings and Distribution of Business.*

Abolition of terms.

**26.** The division of the legal year into terms shall be abolished, so far as relates to the administration of justice; and there shall no longer be terms applicable to any sitting or business of the High Court of Justice, or of the Court of Appeal, or of any commissioners to whom any jurisdiction may be assigned under this act;* but in all other cases in which, under the law now existing, the terms into which the legal year is divided are used as a measure for determining the time at or within which any act is required to be done, the same may continue to be referred to for the same or the like purpose, unless and until provision is otherwise made by any lawful authority. Subject to rules of court, the High Court of Justice and the Court of Appeal, and the judges thereof respectively, or any such commissioners as aforesaid, shall have power to sit and act, at any time, and at any place, for the transaction of any part of the business of such courts respectively, or of such judges or commissioners, or for the discharge of any duty which by any act of Parliament, or otherwise, is required to be discharged during or after term.

* Sect. 29, p. 28.

Courts may sit at any time or place.

It has been held that under the saving clause of this section, the "terms" must be continued to be referred to for the purpose of determining the time for moving to set aside an award under 9 & 10 Will. 3, c. 15, s. 2 (*Christ's College* v. *Martin* (C. A.), 3 Q. B. D. 16; 46 L. J., Q. B. 591; 36 L. T. 537; 25 W. R. 637).

Formerly, terms at law were regulated by 11 Geo. 4 & 1 Will. 4, c. 70, s. 6, which enacted that in the year 1831 and afterwards, Hilary Term should begin on the 11th and end on the 31st of January; Easter Term

should begin on the 15th of April and end on the 8th of May; Trinity Term should begin on the 22nd of May and end on the 12th of June; and Michaelmas Term should begin on the 2nd and end on the 25th of November. The vacations of the courts of equity were under the entire control of the Lord Chancellor. (See Ch. C. O. v.) The present sittings and vacations of the Supreme Court are regulated by Ord. LXI., p. 261. As to circuits, see Act of 1875, s. 23.

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*Sittings of Commissioners of Assize.*] Before the act, the sittings of commissioners of assize were held independently of terms, and continued from their commencement until the business was disposed of. Under the act, these sittings have been in practice limited to the times fixed by Ord. LXI., Rule 1, for "the sittings of the High Court," and the judges have commenced going circuit about a fortnight or three weeks earlier than before the act, in order to be able to dispose of the business before those sittings should close. This early withdrawal of the judges from town business gave rise to two questions in the House of Commons. Mr. Secretary Cross stated (Hansard, vol. ccxxix, p. 921, May 18th, 1876) that "the judges considered that the courts of assize, &c., being parts of the High Court, were subject to the rules of court, and that it would not be proper that they should sit after that date, and it was with that view that the circuits were fixed." The Attorney-General, however, stated (Hansard, vol. ccxxix, p. 1197, May 23rd, 1876) that, "although the courts in question were undoubtedly subject to the rules, he did not think it would be illegal for the judges to sit after the 8th August, either to try causes or prisoners." See the question discussed, Finlason's Judicial System, p. 177. It is submitted that if the Act of 1873 be in conflict with the rules scheduled to the Act of 1875, the latter must prevail, as being posterior in date, but that in reality they are not so in conflict, and that the provision (sect. 29) that a commissioner "shall be deemed to constitute a court" has too much the character of an enabling enactment to introduce a new and inelastic limit to sittings at the assizes. An Order in Council under sect. 27 might perhaps solve the difficulty.

Power to regulate vacations by Order in Council.

**27.** Her Majesty in Council may from time to time, upon any report or recommendation of the judges by whose advice her Majesty is hereinafter authorized to make rules before the commencement of this act, and after the commencement of this act upon any report or recommendation of the council of judges of the Supreme Court hereinafter * mentioned, with the consent of the Lord Chancellor, make, revoke, or modify orders regulating the vacations to be observed by the High Court of Justice and the High † Court of Appeal, and in the offices of the said courts respectively; and any Order in Council made pursuant to this section shall, so long as it continues in force, be of the same effect as if it were contained in this act; and rules of court may be made for carrying the same into effect in the same manner as if such Order in Council were part of this act. In the meantime, and subject thereto, the said vacations shall be fixed in the same manner, and by the same authority, as if this act had not passed. This section shall come into operation immediately upon the passing of this act.

* Sect. 75.

† *Sic.*

No Order in Council has yet (February, 1881) been made under this section, but the primary object of it is attained by Ord. LXI., p. 261, most of which was scheduled to and a part of the Act of 1875. The expression "hereinafter authorized" has reference to sect. 68 of this act,

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now repealed, and the expression "hereinafter mentioned," a little lower down, has reference to sect. 75, which is still in force. By sect. 17 of the Act of 1875, however, "the reference to certain judges in sect. 27 of the principal act shall be deemed to refer to the judges mentioned in that section as the judges on whose recommendation an Order in Council may be made." The method in which the result is effected is not very plain, but the result seems to be, that whereas alterations of rules of court generally may be effected by the committee of the Supreme Court (see Act of 1876, s. 17, p. 114, *post*), alterations of the periods of vacation can only be effected by Order in Council.

Sittings in vacation.

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**28.** Provision shall be made by rules of court for the hearing, in London or Middlesex, during vacation,* by judges of the High Court of Justice and the Court of Appeal respectively, of all such applications as may require to be immediately or promptly heard.

The rules of court (Ord. LXI., Rule 5) do not make any provision for the sittings of vacation judges of the Court of Appeal. It seems to be entirely in the discretion of the vacation judges to decide what matters "require to be heard" within this section. (See *Crom* v. *Samuels*, 2 C. P. D. 21; 46 L. J., C. P. 1; 35 L. T. 423; 25 W. R. 45.)

Commission of assize.

**29.** Her Majesty, by commission of assize or by any other commission, either general or special, may assign to any judge or judges of the High Court of Justice or other persons usually named in commissions of assize, the duty of trying and determining within any place or district specially fixed for that purpose by such commission, any causes or matters, or any questions or issues of fact or of law, or partly of fact and partly of law, in any cause or matter depending in the said High Court, or the exercise of any civil or criminal jurisdiction capable of being exercised by the said High Court; and any commission so granted by her Majesty shall be of the same validity as if it were enacted in the body of this act; and any commissioner or commissioners appointed in pursuance of this section shall, when engaged in the exercise of any jurisdiction assigned to him or them in pursuance of this act, be deemed to constitute a court of the said High Court of Justice; and, subject to any restrictions or conditions imposed by rules of court and to the power of transfer, any party to any cause or matter involving the trial of a question or issue of fact, or partly of fact and partly of law, may, with the leave of the judge or judges to whom or to whose division the cause or matter is assigned, require the question or issue to be tried and determined by a commissioner or commissioners as aforesaid, or at sittings to be held in Middlesex or London as hereinafter in this act mentioned, and such question or issue shall be tried and determined accordingly.

Commissioner to constitute a court.

Any party may require issue of fact to be tried by commissioner of assize.

A cause or matter not involving any question or issue of fact may be tried and determined in like manner with the consent of all the parties thereto.

Persons usually named in commissions of assize (besides judges) are queen's counsel and serjeants-at-law. Sir John Mellor, formerly a judge

of the High Court, was one of the commissioners for the winter assize of 1880, being qualified as a serjeant. There seems to be no power to place on the commission ex-judges who have not been serjeants.

As to postponement of day of opening commission "in case of pressure of business at other places, or other unforeseen circumstances," see 3 Geo. 4, c. 10.

*Commission of Assize.*] The existing chancery judges are exempt from the liability to act under commission of assize, see sect. 11, p. 5. But the latter part of this section gives a plaintiff in the Chancery Division a *primâ facie* right to lay the venue where he pleases.

The effect of constituting a judge, when sitting as commissioner of assize, "a court of the High Court of Justice," is that a judge at assizes has conferred upon him all the statutory powers conferred upon the "court or a judge"—words which, before the act, might in some cases be taken to include a judge sitting in chambers only.

"The leave of the judge or judges," spoken of towards the end of the section, concerns the place, not the mode of trial. (See Ord. XXXVI., Rule 1, p. 204, by which local venue is abolished, and an action is to be tried, unless a judge otherwise orders, in the place named in the statement of claim; and if no place be named in such statement, in Middlesex, unless a judge otherwise orders.) Under the old law, questions of fact might be decided by a judge of a common law court (with the leave of the court) by sect. 1 of the C. L. P. Act, 1854; and questions of fact might be tried by a jury before the Court of Chancery (with the like leave) by sect. 3 of the Chancery Amendment Act, 1858.

*Power of Judge of Chancery Division to try with Jury.*] Lord Cairns, C., in *Cannot* v. *Morgan*, 1 Ch. D. 1; 45 L. J., Ch. 50; 33 L. T. 402, seems to have thought that a judge of the Chancery Division may try a case before a jury in such division, but *Clarke* v. *Cookson* (2 Ch. D. 746; 45 L. J., Ch. 752), decided by Hall, V.-C., after consulting with three other judges of the Chancery Division, and *Warner* v. *Murdoch* (C. A.) (4 Ch. D. 750; 46 L. J., Ch. 121; 35 L. T. 748; 25 W. R. 207), have now settled the contrary to be the law.

Continuous sittings in London and Middlesex.

**30.** Subject to rules of court, sittings for the trial by jury of causes and questions or issues of fact shall be held in Middlesex and London, and such sittings shall, so far as is reasonably practicable, and subject to vacations, be held continuously throughout the year by as many judges as the business to be disposed of may render necessary. Any judge of the High Court of Justice sitting for the trial of causes and issues in Middlesex or London, at any place heretofore accustomed, or to be hereafter determined by rules of court, shall be deemed to constitute a court of the said High Court of Justice.

The judges having construed this section as meaning that the sittings in London and Middlesex need not be contemporaneous, the "continuous sittings" are in practice held first in Middlesex and then in London.

As to the vacations, see sect. 27, and note, p. 27, *ante*, and Ord. LXI., p. 269.

Divisions of High Court.

**31.** For the more convenient despatch of business in the said High Court of Justice (but not so as to prevent any judge from sitting whenever required in any divisional court, or for any judge of a different division from his own), there shall be in

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the said High Court *five* (*g*) divisions, consisting of such number of judges respectively as hereinafter mentioned. Such five divisions shall respectively include, immediately on the commencement of this act, the several judges following; (that is to say,)

Chancery Division.

(1.) One division shall consist of the following judges; (that is to say,) the Lord Chancellor, who shall be president thereof, the Master of the Rolls, and the Vice-Chancellors of the Court of Chancery, or such of them as shall not be appointed ordinary judges of the Court of Appeal:

Queen's Bench Division.

(2.) One other division shall consist of the following judges; (that is to say,) the Lord Chief Justice of England, who shall be president thereof, and such of the other judges of the Court of Queen's Bench as shall not be appointed ordinary judges of the Court of Appeal:

*Common Pleas Division.*

(3.) *One other division shall consist of the following judges; (that is to say,) the Lord Chief Justice of the Common Pleas, who shall be president thereof, and such of the other judges of the Court of Common Pleas as shall not be appointed ordinary judges of the Court of Appeal:* (*h*)

*Exchequer Division.*

(4.) *One other division shall consist of the following judges; (that is to say,) the Lord Chief Baron of the Exchequer, who shall be president thereof, and such of the other barons of the Court of Exchequer as shall not be appointed ordinary judges of the Court of Appeal:* (*h*)

Probate, Divorce and Admiralty Division.

(5.) One other division shall consist of two judges, who immediately on the commencement of this act, shall be the existing judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes and the existing judge of the High Court of Admiralty, unless either of them is appointed an ordinary judge to the Court of Appeal. The existing judge of the Court of Probate shall (unless so appointed) be the president of the said division, and subject thereto the senior judge of the said division, according to the order of precedence under this act, shall be president.

Names of divisions.

The said *five* (*g*) divisions shall be called respectively the Chancery Division, the Queen's Bench Division, *the Common Pleas Division* (*i*), *the Exchequer Division* (*i*), and the Probate, Divorce and Admiralty Division.

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(*g*) Altered to three by Order in Council of December, 1880, under s. 32, *post*.

(*h*) Paragraphs (3) and (4) are impliedly repealed by Order in Council under sect. 32, *post*.

(*i*) Words in italics impliedly repealed by Order in Council under sect. 32, *post*.

*Act of* 1873, *ss.* 31, 32.

Any deficiency of the number of five judges for constituting, in manner aforesaid, immediately on the commencement of this act, any one or more of the Queen's Bench, *Common Pleas, and Exchequer Divisions* (*j*), may be supplied by the appointment, under her Majesty's royal sign manual, either before or after the time fixed for the commencement of this act, of one of the puisne justices or junior barons of any superior court of common law from which no judge may be so appointed as aforesaid to the Court of Appeal, to be a judge of any division in which such deficiency would otherwise exist. And any deficiency of the number of three vice-chancellors or of the two judges of the Probate and Admiralty Division at the time of the commencement of this act may be supplied by the appointment of a new judge in his place in the same manner as if a vacancy in such office had occurred after the commencement of this act.

Filling up deficiency of number in divisions.

Any judge of any of the said divisions may be transferred by her Majesty, under her royal sign manual, from one to another of the said divisions.

Transfer of judge from one division to another.

Upon any vacancy happening among the judges of the said High Court, the judge appointed to fill such vacancy shall, subject to the provisions of this act, and to any rules of court which may be made pursuant thereto, become a member of the same division to which the judge whose place has become vacant belonged.

By sect. 40, that "every judge of the High Court shall be qualified and empowered to sit in any divisional court."

"We consider it expedient," observed the Judicature Commissioners (1st Report, p. 9), "with a view to facilitate the transition from the old to the new system, and to make the proposed change at first as little inconvenient as possible, that the Courts of Chancery, Queen's Bench, Common Pleas and Exchequer should for the present retain their distinctive titles, and should constitute so many chambers or divisions of the Supreme Court."

**32.** Her Majesty in Council may from time to time, upon any report or recommendation of the council of judges of the Supreme Court hereinafter* mentioned, order that any reduction or increase in the number of divisions of the High Court of Justice, or in the number of the judges of the said High Court who may be attached to any such division, may, pursuant to such report or recommendation, be carried into effect; and may give all such further directions as may be necessary or proper for that purpose; and such order may provide for the abolition on vacancy of the distinction of the offices of any of the following judges, namely, the Chief Justice of England, the Master of the Rolls, the Chief Justice of the Common Pleas, and the Chief Baron of the Exchequer, †which may be reduced,† and of the salaries, pensions, and patronage attached

Power to alter divisions and abolish certain distinctive offices by Order in Council.

* Page 51.

[See p. 438.]

† *Sic.*

(*j*) Words in italics impliedly repealed by Order in Council under s. 32.

*Act of* 1873, *ss.* 32, 33.

to such offices, from the offices of the other judges of the High Court of Justice, notwithstanding anything in this act relating to the continuance of such offices, salaries, pensions and patronage; but no such order of her Majesty in Council shall come into operation until the same shall have been laid before each House of Parliament for thirty days on which that house shall have sat, nor, if within such period of thirty days, an address is presented to her Majesty by either House of Parliament, praying that the same may not come into operation. Any such order, in respect whereof no such address shall have been presented to her Majesty shall, from and after the expiration of such period of thirty days, be of the same force and effect as if it had been herein expressly enacted: provided always, that the total number of the judges of the Supreme Court shall not be reduced or increased by any such order.

Order in Council as to alteration of divisions, &c., to be laid before Parliament.

The insensible words, "which may be reduced," possibly represent an intention only to abolish the distinction of offices in case of an order reducing, and not increasing, the number of divisions.

The section contemplates an Order in Council abolishing the distinction of the judicial offices being made while those offices should yet be full, to take effect when they should become vacant; but as a matter of fact an order was made during the vacancy of the offices. The Chief Baron of the Exchequer, Kelly, C.-B., died in the Long Vacation, 1880, and the Chief Justice of England, Cockburn, C.-J., died in November, 1880. The Chief Justice of the Common Pleas, Lord Coleridge, C.-J., being about to be appointed Lord Chief Justice of England, an Order in Council was made on the 16th December, 1880, uniting the judges attached to the Common Pleas and Exchequer Divisions in the "Queen's Bench Division," and abolishing the distinction of offices of the Chief Baron of the Exchequer and the Chief Justice of the Common Pleas. On the 11th February, 1881, Lord Denman in the House of Lords, and Mr. H. Fowler in the House of Commons, moved for an address against the order, but Lord Denman's motion was negatived without a division, and Mr. Fowler's motion by 178 votes to 110. See the Order in Council, which came into force on the 26th day of February, 1881, *post*, p. 438.

Distribution of business by Rules of Court.

**33.** All causes and matters which may be commenced in, or which shall be transferred by this act to, the High Court of Justice, shall be distributed among the several divisions and judges of the said High Court, in such manner as may from time to time be determined by any rules of court, or orders of transfer, to be made under the authority of this act; and in the meantime, and subject thereto, all such causes and matters shall be assigned to the said divisions respectively, in the manner hereinafter provided.* Every document by which any cause or matter may be commenced in the said High Court shall be marked with the name of the division, or with the name of the judge, to which or to whom the same is assigned.

* Sect. 34.

*Distribution of Business.*] This section, which must be read with sects. 34, 35, 36 and 42, gives power to distribute the business indiscriminately, so that business of an equitable character may be allotted to a common law judge, and *vice versâ*. The orders as yet made, however (see Ord. V.,

Rule 4, p. 129), have not materially interfered with the allotment of business marked out by the statute itself in the next section—an allotment which, by giving to the "Chancery Division" all the exclusive statutory jurisdiction of the Court of Chancery, and also jurisdiction over the ten principal subject-matters with which the old Court of Chancery was accustomed to deal, has almost entirely maintained the old state of things for the present.

*Act of* 1873, *ss.* 33, 34.

Assignment of business to particular divisions.

**34.** There shall be assigned (subject as aforesaid) to the Chancery Division of the said court:

Business assigned to Chancery Division.

(1.) All causes and and matters pending in the Court of Chancery at the commencement of this act:

(2.) All causes and matters to be commenced after the commencement of this act, under any act of parliament by which exclusive jurisdiction, in respect to such causes or matters, has been given to the Court of Chancery, or to any judges or judge thereof respectively, except appeals from county courts:

Statutory.

(3.) All causes and matters for any of the following purposes:

Administration.

The administration of the estates of deceased persons;

Partnership.

The dissolution of partnerships or the taking of partnership or other accounts;

Mortgages.

The redemption or foreclosure of mortgages;

Charges.

The raising of portions, or other charges on land;

Sale.

The sale and distribution of the proceeds of property subject to any lien or charge;

Trusts.

The execution of trusts, charitable or private;

Cancellation.

The rectification, or setting aside, or cancellation of deeds or other written instruments;

Real estate.

The specific performance of contracts between vendors and purchasers of real estates, including contracts for leases;

The partition or sale of real estates;

Infants.

The wardship of infants and the care of infants' estates.

Queen's Bench Division.

There shall be assigned (subject as aforesaid) to the Queen's Bench Division of the said court:

(1.) All causes and matters, civil and criminal, pending in the Court of Queen's Bench at the commencement of this act:

(2.) All causes and matters, civil and criminal, which would have been within the exclusive cognizance of the Court of Queen's Bench in the exercise of its original jurisdiction, if this act had not passed.

Common Pleas Division.

*There shall be assigned (subject as aforesaid) to the Common Pleas Division of the said court:*

(1.) *All causes and matters pending in the Court of Common Pleas at Westminster, the Court of Common Pleas at Lancaster, and the Court of Pleas at Durham, respectively, at the commencement of this act:*

*Act of* 1873, *s.* 34.

(2.) *All causes and matters which would have been within the exclusive cognizance of the Court of Common Pleas at Westminster, if this act had not passed* (*k*).

*Exchequer Division.*

*There shall be assigned* (*subject as aforesaid*) *to the Exchequer Division of the said court:*

(1.) *All causes and matters pending in the Court of Exchequer at the commencement of this act:*

(2.) *All causes and matters which would have been within the exclusive cognizance of the Court of Exchequer, either as a Court of Revenue or as a Common Law Court, if this act had not passed* (*k*).

[*Bankruptcy business.* Repealed, Act of 1875, sect. 33. See now sect. 9 of that act, p. 71, *post.*]

Probate, &c. Division.

There shall be assigned (subject as aforesaid) to the Probate, Divorce, and Admiralty Division of the said High Court:

(1.) All causes and matters pending in the Court of Probate, or in the Court for Divorce and Matrimonial Causes, or in the High Court of Admiralty, at the commencement of this act:

(2.) All causes and matters which would have been within the exclusive cognizance of the Court of Probate, or the Court for Divorce and Matrimonial Causes, or of the High Court of Admiralty, if this act had not passed.

*Chancery Division.*] For a short abstract of the numerous statutes under which exclusive jurisdiction has been from time to time given to the Court of Chancery, see p. 552, *post.* County court appeals on equitable matters, which went before the act to the Court of Chancery under 28 & 29 Vict. c. 99, now go, along with other appeals from inferior courts, to divisional courts of the High Court, under sect. 45 of this act.

It should be observed that the particular classes of cases assigned to the Chancery Division by par. 3, are causes or matters instituted for the specific "purposes" enumerated. The sub-section does not prevent any other division of the court taking cognizance of rights and liabilities coming within the category, where the action has not been brought for the purpose of enforcing that specific right or liability. Thus, if an action be brought in the Queen's Bench Division for damages, and a counter-claim is set up under sub-sect. 3 of sect. 24 for the specific performance of a contract for the purchase of real estate, there is no reason why the Queen's Bench Division should not adjudicate on such counter-claim. And see *Rogers* v. *Jones*, 7 Ch. D. 345 (action by legatee); *Pinney* v. *Hunt*, 6 Ch. D. 98 (action for partition). The ten heads of business assigned to the Chancery Division are mainly of an administrative as distinguished from a litigious character. Taken together with the subjects over which the Court of Chancery had an exclusive statutory jurisdiction, they will be found to make up the bulk and substance of what was Chancery business before the act. Certain Chancery jurisdiction in lunacy is not transferred to the High Court at all (see sect. 17, sub-sect. 3). Amongst the instances of Chancery jurisdiction not assigned to the Chancery Division are *ne exeat regno*, perpetuation of testimony, and

(*k*) Impliedly repealed by Order in Council under sect. 32, *ante.*

evidence *de bene esse*, besides the large field of injunctions in matters not having reference to any subject enumerated in the category, and specific performance of contracts other than those for the sale of real estate. Although the power of reforming agreements is assigned to the Chancery Division, it has been held that sect. 24, sub-sect. 2 (p. 16, *ante*), gives any of the other divisions power to treat a deed as reformed or set aside. (*Mostyn* v. *West Mostyn, &c. Co.*, 1 C. P. D. 145; 45 L. J., C. P. 401; 34 L. T. 325; and see *Breslauer* v. *Barwick*, 24 W. R. 901.)

*Queen's Bench Division.*] It is only matters hitherto within the exclusive cognizance of the Court of Queen's Bench, "in the exercise of its original jurisdiction," that are assigned to the Queen's Bench Division. The term "original jurisdiction" is used in the act as distinguished from appellate jurisdiction. (See sect. 4 and the definition of "cause" in sect. 100.) The removal of cases from inferior courts by certiorari, being an exercise of original jurisdiction, is assigned by this section to the Queen's Bench Division, as also is the prerogative writ of mandamus, the quo warranto information, the criminal information, and the jurisdiction in allowing bail, in all of which cases jurisdiction was exercised by the Queen's Bench, as the sovereign criminal court of the country. As to the summoning of a grand jury to dispose of indictments in the Queen's Bench, see 35 & 36 Vict. c. 52. As to hearing of appeals by the Queen's Bench from the Inclosure Commissioners, see 8 & 9 Vict. c. 118, s. 44. The Court of Queen's Bench had also exclusive jurisdiction to try public officers for offences committed abroad. See 13 Geo. 3, c. 63, ss. 39—41, as to India, and 42 Geo. 3, c. 85, as to the offences of public officers out of Great Britain, generally. An application for a rule to justices to state a case under 20 & 21 Vict. c. 43, s. 5, is part of the exclusive original jurisdiction of the Queen's Bench, and must still be made to the Queen's Bench Division. (*Ellershaw, Re*, 1 Q. B. D. 481.)

*Bail Court.*] The "Bail Court," as originally created by 57 Geo. 3, c. 11 (repealed, Statute Law Revision Act, 1873), was the court in which one judge of the Queen's Bench was empowered to sit apart from the others for the business of "aiding and justifying special bail," a power which, along with that of hearing and deciding matters on motion, &c., was afterwards conferred on the judges of the three common law courts indiscriminately by 11 Geo. 4 & 1 Will. 4, c. 70, s. 1. No mention is made of the "Bail Court" in the act, but as the jurisdiction of the Queen's Bench is to cease to be exercised, the derivative jurisdiction of the Bail Court falls with it.

*Common Pleas Division.*] Actions for dower and actions of quare impedit (see Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126, s. 26)), acknowledgments under the Fines and Recoveries Act (3 & 4 Will. 4, c. 74, s. 83), appeals from revising barristers (6 Vict. c. 18, s. 60), parliamentary election petitions under the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125, s. 5 and s. 11, sub-sect. 16), municipal election petitions under the Corrupt Practices (Municipal Elections) Act, 1872 (35 & 36 Vict. c. 60, s. 2 and s. 15), were, before the act, within the exclusive cognizance of the Court of Common Pleas (otherwise called the Court of Common Bench), and, by operation of the Order in Council under sect. 32, *ante*, belong to the Queen's Bench Division. The Court of Common Pleas had also exclusive cognizance of questions arising under the Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), but that jurisdiction was, by the Railway Regulation Act, 1873 (36 & 37 Vict. c. 48), transferred for five years to the Railway Commissioners, who were continued in office by 42 & 43 Vict. c. 56, until the 31st December, 1882.

*Exchequer Division.*] The Court of Exchequer had always exclusive jurisdiction in matters of revenue, administering both law and equity concurrently. The act 5 & 6 Vict. c. 5, took away the equitable jurisdiction of the court as between subject and subject, but it was decided in *Att.-Gen.* v. *Hallin* (15 M. & W. 687), that this provision did not apply to the equitable jurisdiction in matters of revenue. By 18 & 19 Vict. c. 90, the

*Act of* 1873, *ss.* 34—37.

practice in crown suits was assimilated as nearly as possible to the practice in suits between subject and subject, but the procedure in such suits is now chiefly governed by the Crown Suits Act, 1865. (See "Additional Acts," No. X., p. 549). As revenue proceedings in the Exchequer are commenced not by writ, but by information, the practice respecting them remains generally unaffected. (See Ord. I., Rule 1; Ord. LXII.) The crown had a right to have any legal proceeding, in whatever court and between whatever parties, which touches the profit of the crown, brought into the Exchequer, and tried there. This was done by motion of the Attorney-General. (*Att.-Gen.* v. *Hallett*, 15 M. & W. 97). The same prerogative obtained in the Exchequer Division (*Att.-Gen.* v. *Constable*, 4 Ex. D. 172), and will now obtain in the Queen's Bench Division.

*Admiralty.*] Notwithstanding the provision of sect. 45, the Probate, Divorce and Admiralty Division has sole jurisdiction to hear appeals from the Admiralty side of a county court under 31 & 32 Vict. c. 71, s. 26. (*The Two Brothers*, 1 P. D. 52; 33 L. T. 792).

[**35.** *Selection of division by plaintiff: discretionary transfer by court, in case of wrong division being selected.* Repealed, Act of 1875, sect. 33, and sched. 2. See now sect. 11 of that act, p. 73, *post.*]

Power of transfer.

**36.** Any cause or matter may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by such authority and in such manner as rules of court * may direct, from one division or judge of the High Court of Justice to any other division or judge thereof, or may by the like authority be retained in the division in which the same was commenced, although such may not be the proper division to which the same cause or matter ought, in the first instance, to have been assigned.

* Page 239.

Trials by jury before judges of Queen's Bench Division.

Power to include judge of Chancery Division in commission of assize.

**37.** Subject to any arrangements which may be from time to time made by mutual agreement between the judges of the said High Court, the sittings for trials by jury in London and Middlesex, and the sittings of judges of the said High Court under commissions of assize, oyer and terminer, and gaol delivery, shall be held by or before judges of the Queen's Bench, *Common Pleas, or Exchequer* (*l*) Division of the said High Court; provided that it shall be lawful for her Majesty, if she shall think fit, to include in any such commission any ordinary judge of the Court of Appeal or any judge of the Chancery Division to be appointed after the commencement of this act, or any serjeant-at-law, or any of her Majesty's counsel learned in the law, who, for the purposes of such commission, shall have all the power, authority, and jurisdiction of a judge of the said High Court.

"The sittings" comprehended in this section are, (1) the town sittings, which before the act might be held at any time of the year, except between the 10th August and the 24th October (Common Law Procedure

(*l*) Words in italics impliedly repealed by Order in Council, p. 438, *post*, under sect. 32, *ante*.

Act, 1854, s. 95), and were usually held both in and after term; and (2) the country sittings, or sittings on circuit, held twice a year in the vacations after Hilary and Trinity Terms respectively. Both town and country sittings were held by common law judges. Since 1858 the Court of Chancery had, by the 21 & 22 Vict. c. 27, s. 3, the power of ordering questions of fact to be tried by a jury before the court itself, but no regular "sittings" were ever held for this purpose, and the power was but little exercised. By sect. 11 no judge appointed before the passing of the act is to be required to act under any commission of assize, &c. unless he was so liable at the commencement of the act.

As to trial by jury of actions in the Chancery Division, see sect. 29, and note, p. 28.

Rota of judges for election petitions.

**38.** The judges to be placed on the rota for the trial of election petitions for England in each year, under the provisions of the Parliamentary Elections Act, 1868, shall be selected out of the judges of the Queen's Bench, *Common Pleas* and *Exchequer* (*m*) Divisions of the High Court of Justice in such manner as may be provided by any rules of court to be made for that purpose; and in the meantime, and subject thereto, shall be selected out of the judges of the said Queen's Bench, *Common Pleas* and *Exchequer* (*m*) Divisions of the said High Court, by the judges of such divisions respectively, as if such divisions had been named instead of the Courts of Queen's Bench, *Common Pleas* and *Exchequer* (*m*) respectively, in such last-mentioned act: provided that the judges who, at the commencement of this act, shall be upon the rota for the trial of such petitions during the then current year, shall continue upon such rota until the end of such year, in the same manner as if this act had not passed.

*Election Petition.*] By the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), which is a temporary act, and has been continued from time to time by expiring laws continuance acts (and lastly by 43 Vict. c. 18, till 31st December, 1881), it is enacted (s. 11) that "the trial of every election petition shall be conducted before a puisne judge" of one of the superior courts of common law, and that "the members of each of the Courts of Queen's Bench, Common Pleas and Exchequer shall, on or before the third day of Michaelmas Term in every year, select, by a majority of votes, one of the puisne judges of such court, not being a member of the House of Lords, to be placed on the rota for the trial of election petitions during the ensuing year." The Parliamentary Elections and Corrupt Practices Act, 1879, 42 & 43 Vict. c. 75, enacts that petitions shall be tried before two judges instead of one.

Jurisdiction of single judge.

**39.** Any judge of the said High Court of Justice may, subject to any rules of court, exercise in court or in chambers all or any part of the jurisdiction by this act vested in the said High Court, in all such causes and matters, and in all such proceedings in any causes or matters, as before the passing of

(*m*) See Order in Council, p. 438, *post*, under sect. 32, *ante*, by which the Common Pleas and Exchequer Divisions are merged in the Queen's Bench Division.

*Act of* 1873, *ss.* 39—41.

this act might have been heard in court or in chambers respectively, by a single judge of any of the courts whose jurisdiction is hereby transferred to the said High Court, or as may be directed or authorized to be so heard by any rules of court to be hereafter made. In all such cases, any judge sitting in court shall be deemed to constitute a court.

Judge constitutes a court.

Before the act, a single judge had jurisdiction in the Court of Chancery in all causes whatever. The jurisdiction of a Chancery judge in chambers was regulated by 15 & 16 Vict. c. 80, and Ch. C. O. xxxv. By the statute it comprised such of certain specified matters (*i. e.* applications for time to plead, for production of documents) as the judge should from time to time think might be more conveniently disposed of in chambers than in open court, and "such other matters as each such judge may from time to time see fit, or as may from time to time be directed by any general order of the Lord Chancellor." By Ch. C. O. xxxv. numerous additions were made, such as applications for payment of limited amounts under the Trustee Relief Acts, and of any amounts under the Trustee Acts, &c. In the common law courts trials were had before one judge only, but points of law and all other proceedings except trials, were ordinarily heard before the court "in banc," consisting of three or four judges. (See 11 Geo. 4 & 1 Will. 4, c. 70, s. 1.) For the important extension of the jurisdiction of a single judge now given by the Act of 1876, see sect. 17 of that act, p. 102, *post*.

Divisional courts and number of judges.

**40.** Such causes and matters as are not proper to be heard by a single judge shall be heard by divisional courts of the said High Court of Justice, which shall for that purpose exercise all or any part of the jurisdiction of the said High Court. Any number of such divisional courts may sit at the same time. A divisional court of the said High Court of Justice shall be constituted by two or three, and no more, of the judges thereof; and, except when through pressure of business or ony other cause it may not conveniently be found practicable, shall be composed of three such judges. Every judge of the said High Court shall be qualified and empowered to sit in any of such divisional courts. The president of every such divisional court of the High Court of Justice shall be the senior judge of those present, according to the order of their precedence under this act.

Every judge may sit in any divisional court.

*Divisional Court to be composed of two Judges only.*] The Appellate Jurisdiction Act of 1876, s. 17 (p. 102), after providing that every action and proceeding is to be disposed of, so far as practicable, by a single judge, enacts that "divisional courts may be held for the transaction of any business which may for the time being be ordered by rules of court to be heard by a divisional court," and that a divisional court "shall," ordinarily speaking, "be constituted of two judges and no more," and repeals from and after the 1st December, 1876, "so much of" the present section and of sects. 41, 42, 43, 44 and 46 "as is inconsistent with the provisions of that section."

Divisional courts for business "in banc."

**41.** Subject to any rules of court, and in the meantime until such rules shall be made, all business belonging to the

Queen's Bench, *Common Pleas*, and *Exchequer* (*n*) Divisions respectively of the said High Court, which, according to the practice now existing in the superior courts of common law, would have been proper to be transacted or disposed of by the court sitting in banc, if this act had not passed, may be transacted and disposed of by divisional courts, which shall, as far as may be found practicable and convenient, include one or more judge or judges attached to the particular division of the said court to which the cause or matter out of which such business arises has been assigned; and it shall be the duty of every judge of such last-mentioned division, and also of every other judge of the High Court who shall not for the time being be occupied in the transaction of any business specially assigned to him, or in the business of any other divisional court, to take part, if required in the sittings of such divisional courts as may from time to time be necessary for the transaction of the business assigned to the said Queen's Bench, *Common Pleas* and *Exchequer* (*n*) Divisions respectively; and all such arrangements as may be necessary or proper for that purpose, or for constituting or holding any divisional courts of the said High Court of Justice for any other purpose authorized by this act, and also for the proper transaction of that part of the business of the said Queen's Bench, *Common Pleas* and *Exchequer* (*n*) Divisions respectively, which ought to be transacted by one or more judges not sitting in a divisional court, shall be made from time to time under the direction and superintendence of the judges of the said High Court; and in case of difference among them, in such manner as a majority of the said judges, with the concurrence of the Lord Chief Justice of England, shall determine.

*Act of* 1873, *ss.* 41, 42.

Arrangements for holding divisional courts.

See note to last section.

**42.** Subject to any rules of court, and in the meantime until such rules shall be made, all business arising out of any cause or matter assigned to the Chancery or Probate, Divorce, and Admiralty Division of the said High Court shall be transacted and disposed of in the first instance by one judge only, as has been heretofore accustomed in the Court of Chancery, the Court of Probate and for Divorce and Matrimonial Causes, and the High Court of Admiralty respectively; and every cause or matter which, at the commencement of this act, may be depending in the Court of Chancery, the Court of Probate and for Divorce and Matrimonial Causes, and the High Court of Admiralty respectively, shall (subject to the power of transfer) be assigned to the same judge in or to whose court the same may have been depending or attached at the commencement

Business of Chancery, Probate, Divorce and Admiralty Division to be disposed of by single judge.

(*n*) By Order in Council, p. 438, *post*, under sect. 32, *ante*, the Common Pleas and Exchequer Divisions are merged in the Queen's Bench Division.

*Act of* 1873, *ss.* 42—45.

of this act; and every cause or matter which after the commencement of this act may be commenced in the Chancery Division of the said High Court shall be assigned to one of the judges thereof, by marking the same with the name of such of the said judges as the plaintiff or petitioner (subject to the power of transfer) may in his option think fit: Provided that (subject to any rules of court, and to the power of transfer, and to the provisions of this act as to trial of questions or issues by commissioners, or in Middlesex or London), all causes and matters which, if this act had not passed, would have been within the exclusive cognizance of the High Court of Admiralty, shall be assigned to the present judge of the said Admiralty Court during his continuance in office as a judge of the High Court.

Selection of judge by plaintiff in Chancery Division.

See note to sect. 40.

The judges of the divisions mentioned in this section have been heretofore judges of both fact and law, with a power, generally discretionary, to call in the assistance of a jury to try questions of fact. For "the power of transfer," so often mentioned in the section, see sect. 36, p. 36, and Ord. LI., Rule 1.

Divisional courts for business of Chancery Division.

**43.** Divisional courts may be held for the transaction of any part of the business assigned to the said Chancery Division, which the judge, to whom such business is assigned, with the concurrence of the president of the same division, deems proper to be heard by a divisional court.

See note to sect. 40. Before the act, it was only by way of appeal that the business now assigned to the Chancery Division was heard by more than one judge.

Divisional courts for business of Probate, &c. Division.

**44.** Divisional courts may be held for the transaction of any part of the business assigned to the Probate, Divorce, and Admiralty Division of the said High Court, which the judges of such division, with the concurrence of the president of the said High Court, deem proper to be heard by a divisional court. Any cause or matter assigned to the said Probate, Divorce, and Admiralty Division may be heard at the request of the president of such division, with the concurrence of the president of the said High Court, by any other judge of the said High Court.

See note to sect. 40.

Appeals from inferior courts to High Court.

**45.** All appeals from petty or quarter sessions, from a county court, or from any other inferior court, which might before the passing of this act have been brought to any court or judge whose jurisdiction is by this act transferred to the High Court of Justice, may be heard and determined by divisional courts of the said High Court of Justice, consisting respectively of such of the judges thereof as may from time to time be assigned for that purpose, pursuant to rules of court,* or (subject to rules of court) as may be so assigned according to arrangements made for the purpose by the judges of the

* See Ord. LVIII., Rule 19.

said High Court. The determination of such appeals respectively by such divisional courts shall be final, unless special leave to appeal from the same to the Court of Appeal shall be given by the divisional court by which any such appeal from an inferior court shall have been heard.

*Act of* 1873, *s.* 45.

Leave to appeal from High Court.

By the Act of 1876, s. 20, p. 103, *post*, where the decision on the appeal from the inferior court is made final by statute, there is no further appeal to the Court of Appeal, but it has been held that that section and the present section are to be read together, so as to allow the further appeal *by special leave* of the Divisional Court. (*Crush* v. *Turner* (C. A.), 3 Ex. D. 303; 47 L. J., Ex. 639; 38 L. T. 595; 26 W. R. 673.) Leave will be refused if the Divisional Court entertains no doubt as to the correctness of an affirmed decision. (*Cottam*, app., *Guest*, resp., 6 Q. B. D. 70; 29 W. R. 305.) See note to sect. 19, p. 11, *ante*, for cases coming within sect. 17 of the Act of 1876. An order discharging a rule to show cause why a justice's order for removal of a pauper lunatic to an asylum should not be brought up on certiorari, is not within this section, and may be appealed against without leave. (*Reg.* v. *Pemberton* (C. A.), 5 Q. B. D. 95.) A rule to justices to state a case under 20 & 21 Vict. c. 43, can be granted by the Queen's Bench Division only. (*Re Ellershaw*, 1 Q. B. D. 481.)

*Appeal from Petty Sessions under* 20 *&* 21 *Vict. c.* 43, *and Summary Jurisdiction Act*, 1879, s. 33.] The appeal from petty sessions is given by 20 & 21 Vict. c. 43, and the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, s. 33. The former act enacts (sect. 2), that "after the hearing and determination by a justice or justices of the peace of any *information or complaint* which he or they have power to determine in a summary way, either party to the proceeding may, if dissatisfied with the said determination as being erroneous in point of law, apply in writing within three days after the same to the said justice or justices to state and sign a case setting forth the facts and ground of such determination for the opinion thereon of one of the superior courts of law to be named by the party applying." The Summary Jurisdiction Act, 1879, allows any "*conviction order or other proceeding*" to be questioned in a similar manner, and in accordance with rules under that Act and the Judicature Act. By Rule 17 of the Summary Jurisdiction Rules, 1880, an application to state a case may be made in 7 days, "and the case shall be stated within 3 calendar months from the date of the application."

*Appeal from Quarter Sessions.*] By sect. 11 of 12 & 13 Vict. c. 45 (Baines' Act), it is enacted that at any time after notice of appeal to quarter sessions against any judgment, order, rate, or other matter, except an order in bastardy, or a matter of revenue, it shall be lawful for the parties by consent and by order of a judge to state the facts of the case in the form of a special case for the opinion of a superior court, "and to agree that a judgment in conformity with the decision of such court, and for such costs as the court shall adjudge, may be entered on motion by either party at the sessions next or next but one after such decision shall have been given."

It has been held in *Reg.* v. *Savin*, Dec. 20th, 1880, that the appeal from quarter sessions *at common law* by special case, which it is in the discretion of the justices at sessions to grant or refuse, does not come within this section, so as to require leave to be given for a further appeal; and it is clear that judgment on such a case is within sect. 19, *ante*. (*Walsall Overseers* v. *L. & N. W. R. Co.*, 4 App. Cas. 30.) An appeal by case, however, under the Public Health Act, 1875, sect. 269, sub-sect. 7, is within this section, so as to require leave for a further appeal. (*Hinton* v. *Swindon New Town Local Board*, 49 L. J., Q. B. 522; 42 L. T. 614: 28 W. R. 80.) By sect. 40 of the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49 (suggested by *Reg.* v. *Chantrell*, L. R., 10 Q. B. 587), "a writ of certiorari or other writ shall not be required for the

*Act of* 1873, *ss.* 45—47.

removal of any conviction order or determination" in relation to which such a case is stated. The practice under this enactment is that the clerk of the peace should send up the case to the crown office, on notice from the solicitor of the party requiring it. (*Clarke* v. *Alderbury Union*, 29 W. R. 334; *Reg.* v. *Baxendale*, *ib.* 335, and see both these cases as to costs.) The Court will refuse to entertain a case merely stating facts to obtain an opinion. (*Reg.* v. *Sutton Coldfield*, L. R., 9 Q. B. 153.)

*Appeal from County Court.*] See the acts set out at p. 530, *post*. Appeals from county courts are given by 13 & 14 Vict. c. 61, s. 14, to either party dissatisfied "with the determination or direction of the court in point of law, or upon the admission or rejection of evidence," by 19 & 20 Vict. c. 108, s. 68, and County Court Act, 1875 (38 & 39 Vict. c. 50), s. 6, under which latter act the appeal is made by motion within eight days to the court to which the appeal lies, or to a judge in chambers or in court (*Eccles* v. *Eccles*, 33 L. T. 338), if the court be not sitting. There is no appeal from a county court, under these acts, on a question of fact. (*Cousins* v. *Lombard Deposit Bank*, 1 Ex. D. 404; 45 L. J., C. P. 573; 35 L. T. 484.) A like appeal is also given by 28 & 29 Vict. c. 99, s. 18, to a party dissatisfied with the determination of a county court on any matter of law or equity (not being a mere matter of fact (*Hill* v. *Perssé*, 25 W. R. 275)) arising out of an equity suit within that act. The appeal in Admiralty is given by 31 & 32 Vict. c. 71, s. 26, by which an appeal might be made "to the High Court of Admiralty of England from an interlocutory decree with leave of the county court judge, and from a final decree without such leave." It would seem that there is an appeal, under this act, on questions of fact.

Appeals from the equitable side of a county court are included in this section, and are excluded by sect. 34 from the assignment of particular business to the Chancery Division. But the particular words of sect. 34 have the effect ot retaining Admiralty appeals in the Probate, Divorce and Admiralty Division. (*The Two Brothers*, 1 P. D. 52. And see Ord. LVIII., Rule 19, p. 263, by which the divisional court under the present section is constituted.)

*Appeal from Mayor's Court.*] The appeal from the Lord Mayor's Court, London, against a judgment on demurrer, or other question arising upon the record, lies to the Court of Appeal under sect. 18, and not to the divisional court sitting under the present section (*Le Blanche* v. *Reuter's Telegram Co.*, 1 Ex. D. 408; 34 L. T. 691; 25 W. R. 115); but an application for a new trial, or to enter a verdict, lies to the divisional court, and the special leave of such court under this section is necessary for a further appeal to the Court of Appeal. (*Appleford* v. *Judkins* (C. A.), 3 C. P. D. 489; 47 L. J., C. P. 615; 38 L. T. 801; 26 W. R. 734.) And by sect. 3 of the Act of 1876 (p. 93, *post*), a further appeal lies to the House of Lords.

Reservation of cases and points.

**46.** Subject to any rules of court, any judge of the said High Court, sitting in the exercise of its jurisdiction elsewhere than in a divisional court, may reserve any case, or any point in a case, for the consideration of a divisional court, or may direct any case, or point in a case, to be argued before a divisional court; and any divisional court of the said High Court shall have power to hear and determine any such case or point so reserved or so directed to be argued.

See note to sect. 40, p. 38, *ante*.

Crown Cases reserved.

**47.** The jurisdiction and authorities in relation to questions of law arising in criminal trials which are now vested in the justices of either bench and the barons of the exchequer by

*Act of* 1873, *ss.* 47, 48.

Crown Cases reserved—(*continued*).

the act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter seventy-eight, intituled "An Act for the further amendment of the administration of the Criminal Law," or any act amending the same, shall and may be exercised after the commencement of this act by the judges of the High Court of Justice, or five of them at the least, of whom the Lord Chief Justice of England, *the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, or one of such chiefs at least* (*p*), shall be part. The determination of any such question by the judges of the said High Court in manner aforesaid shall be final and without appeal; and no appeal shall lie from any judgment of the said High Court in any criminal cause or matter, save for some error of law apparent upon the record, as to which no question shall have been reserved for the consideration of the said judges under the said act of the eleventh and twelfth years of her Majesty's reign.

Judgment of High Court to be final.

No appeal in criminal cause, except where error on record.

By 11 & 12 Vict. c. 78, after reciting that it was "expedient to provide a better mode than that in use of deciding any difficult question of law which might arise in criminal trials in any court of oyer and terminer and gaol delivery," it was enacted "that when any person should have been convicted of any treason, felony, or misdemeanor, before any court of oyer and terminer or general gaol delivery, or court of quarter sessions, the judge or commissioner, or justices of the peace before whom the case should have been tried might, in his or their discretion, reserve any question of law which should have arisen on the trial for the consideration of the justices of either bench, or the barons of the exchequer," the questions reserved to be stated by way of special case, and the court (constituted as in the present section) to have power to hear and finally determine them.

The saving which occurs in the final clause of the section is probably intended to preserve "the writ of error," which otherwise might have been thought to be included in the expression "proceedings in error," which are "abolished" by Ord. LVIII., Rule 1, p. 256.

The words "criminal cause or matter" include an order to pay the costs of a criminal information for libel under 6 & 7 Vict. c. 96, s. 8 (*R.* v. *Steel*, 2 Q. B. D. 37; 46 L. J., M. C.; 35 L. T. 534; 25 W. R. 34), a summary conviction brought up on certiorari (*R.* v. *Fletcher*, 2 Q. B. D. 43; 46 L. J., M. C. 4; 35 L. T. 538; 25 W. R. 149), and a case stated by justices under 20 & 21 Vict. c. 43, upon a summary conviction (*Blake* v. *Beach*, 2 Ex. D. 335; 36 L. T. 723); although the conviction be merely for breach of a bye-law. (*Mellor* v. *Denham*, 5 Q. B. D. 467; 49 L. J., M. C. 89; 42 L. T. 493.)

Two appeals (*Inland Revenue Board* v. *Peake*, 1 Ex. D. 385; *Attorney-Gen.* v. *Moore*, 3 Ex. D. 276) have been heard in revenue cases; but in neither of them was the jurisdiction of the court questioned. It is conceived that proceedings for revenue penalties are not criminal causes within the meaning of this section.

[**48.** *Motion for new trial to be heard before divisional court.* Repealed, Act of 1875, s. 33. See Order XXXIX.]

*Concerning "Motion for New Trial."*] This section is now replaced by Orders as to "Motion for New Trial," and "Motion for Judgment,"

(*p*) Words in italics impliedly repealed by Order in Council under s. 32, *ante*.

*Act of* 1873, *ss.* 48—50.

pp. 219—224. The object of the change would seem to have been not to hamper the judges of the Chancery Division, who are excepted from the operation of Ord. XXXIX.

Orders as to costs, &c. not appealable without leave.

**49.** No order made by the High Court of Justice or any judge thereof, by the consent of parties, or as to costs only, which by law are left to the discretion of the court, shall be subject to any appeal, except by leave of the court or judge making such order.

For the discretion of the court as to costs, see Ord. LV. There is however an appeal on a question of principle, as where on a motion to commit for contempt, the defendant was ordered to pay costs only, inasmuch as he had a right to have it decided whether he had committed a contempt or not. (*Witt* v. *Corcoran*, 2 Ch. D. 69; 45 L. J., Ch. 603; 34 L. T. 550; 24 W. R. 501.) But no appeal lies from an order that the costs of a refused application to commit be made costs in the cause (*Ashworth* v. *Outram*, 5 Ch. D. 943), nor from an order depriving a trustee of his costs for impropriety of conduct (*Hoskin's Trusts, In re* (C. A.), 6 Ch. D. 281; 46 L. J., Ch. 817; 26 W. R. 779), although an appeal lies from an order granting a trustee his costs out of a fund in court. (*Chennell, In re* (C. A.), 8 Ch. D. 492; 47 L. J., Ch. 80; 38 L. T. 494; 26 W. R. 595.)

Where an action was dismissed without costs, and the plaintiff's appeal was dismissed, it was held that the court could not vary the decree by directing that the action should be dismissed with costs. (*Harris* v. *Aaron* (C. A.), 4 Ch. D. 749; 46 L. J., Ch. 488; 36 L. T. 43; 25 W. R. 343. See also *New Gas Company, In re*, 5 Ch. D. 703; *Graham* v. *Campbell* (C. A.), 7 Ch. D. 490; 47 L. J., Ch. 593; 38 L. T. 195; 26 W. R. 336.)

There is an appeal, as of right, on a question of taxation of costs (*Marcus* v. *Steam Navigation Co.* (C. A.), 35 L. T. 353); and on a question of security for costs (*Northampton Coal Co.* v. *Midland Waggon Co.*, 7 Ch. D. 500); and also against an order imposing, as a condition of a new trial, the payment of the costs of the first within a certain time. (See *Metropolitan Asylum District* v. *Hill*, 5 App. Cas. 582, not decided on this section, but on general principle.)

Orders in chambers generally, how dischargeable.

**50.** Every order made by a judge of the said High Court in chambers, except orders made in the exercise of such discretion as aforesaid, may be set aside or discharged upon notice by any divisional court, or by the judge sitting in court, according to the course and practice of the division of the High Court to which the particular cause or matter in which such order is made may be assigned; and no appeal shall lie from any such order, to set aside or discharge which no such motion has been made, unless by special leave of the judge by whom such order was made, or of the Court of Appeal.

*Murr* v. *Cooke*, 34 L. T. 751, per Hall, V.-C., seems hardly reconcileable with the provisions of this section.

The "discretion as aforesaid" is the discretion as to costs. Except as respects costs, therefore, every order made in chambers is appealable. See further, Ord. LIV. "Applications at Chambers," p. 246.

Before hearing an appeal from a judge of the Chancery Division in chambers, it is the practice to require the judge's certificate that he did not require the case to be adjourned into court; but the object of such a certificate is only to satisfy the Court of Appeal that the judge has judicially determined the matter, and if otherwise satisfied of that fact, the Court of Appeal will hear the appeal without a certificate, if the judge declines to give one. (*Elsom, In re* (C. A.), 6 Ch. D. 346; 25 W. R. 871.)

Vacancy in High Court may be supplied from Court of Appeal.

**51.** Upon the request of the Lord Chancellor, it shall be lawful for any judge of the Court of Appeal, who may consent so to do, to sit and act as a judge of the said High Court or to perform any other official or ministerial acts for or on behalf of any judge absent from illness or any other cause, or in the place of any judge whose office has become vacant, or as an additional judge of any division; and while so sitting and acting any such judge of the Court of Appeal shall have all the power and authority of a judge of the said High Court.

Under this section, Lush, L. J., has sat in the Exchequer Division, and Brett and Lush, L.JJ., have sat at chambers.

By sect. 4 of the Act of 1875, judges of the High Court may be requested to sit in the Court of Appeal as "additional judges."

Power of a single judge in Court of Appeal.

**52.** In any cause or matter pending before the Court of Appeal, any direction incidental thereto, not involving the decision of the appeal, may be given by a single judge of the Court of Appeal; and a single judge of the Court of Appeal may at any time during vacation make any interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit; but every such order made by a single judge may be discharged or varied by the Court of Appeal or a divisional court thereof.

[**53.** *Appeals to be determined by not less than three judges. Court to have power to direct rehearing before a greater number.* Repealed, Act of 1875, sect. 33, and schedule. See now sect. 12 of that act, p. 74, *post.*]

[**54.** *Judges not to sit on appeal from their own judgments.* Repealed, Act of 1875, sect. 4., p. 67, *post.*]

[**55.** *Transfer of business from Judicial Committee to Court of Appeal.* Suspended until 1st Nov. 1876, by sect. 2 of Act of 1875. Repealed, Appellate Jurisdiction Act of 1876, sect. 118. See now sect. 14 of that act, p. 98, *post.*]

## Part IV.

### *Trial and Procedure.*

Compulsory reference.

**56.** Subject to any rules of court, and to such right as may now exist to have particular cases submitted to the verdict of a jury, any question arising in any cause or matter (other than a criminal proceeding by the Crown) before the High Court of Justice, or before the Court of Appeal, may be referred by the court or by any divisional court or judge before whom such cause or matter may be pending, for inquiry and report to any official or special referee, and the report of any such referee may be adopted wholly or partially by the court, and may (if so adopted) be enforced as a judgment by the court. The High

*Act of* 1873, *ss.* 56, 57.

Assessors.

Court, or the Court of Appeal, may also, in any such cause or matter as aforesaid in which it may think it expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear such cause or matter wholly or partially with the assistance of such assessors. The remuneration, if any, to be paid to such special referees or assessors shall be determined by the court.

The power to order a compulsory reference, given by this section, is made subject to rules of court and "to such right as may have existed at the time of the passing of the act, to have particular cases submitted to the verdict of a jury." As to the meaning of the second qualification, see Ord. XXXVI., Rule 26; and note, p. 211. Neither under this section, nor under rules of court, can one party force a trial before assessors if the other desire a trial by jury. (*Sugg* v. *Silber*, 1 Q. B. D. 362; 45 L. J., Q. B. 682; 34 L. T. 682; 24 W. R. 640.) This was an action for infringement of a patent, and both Cockburn, C. J., and Pollock, B., expressed an opinion that the preservation of the right to a jury in such cases was impolitic.

This section gives the court power to refer questions in an action, not the action itself, to the referee, and gives the referee power to inquire and report, not to enter judgment. (*Longman* v. *East*, *Pontifex* v. *Severn*, *Mellin* v. *Monico* (C. A.), 3 C. P. D. 142; 47 L. J., C. P. 211; 38 L. T. 1; 26 W. R. 183.) The findings of the referee should be separate on each of the questions referred. (Ib.) A judge cannot alter the report; if he refuse to adopt it, he must either hear the case himself, or send the report back to the referee for amendment. (*Dunkirk Hall Colliery Co.* v. *Lever*, 9 Ch. D. 20; 39 L. T. 239; 26 W. R. 841.) An order to alter the report is interlocutory. (Ib.) A motion to set aside judgment on the findings must be made on affidavit of the proceedings on reference. (*Stubbs* v. *Boyle*, 2 Q. B. D. 124; 46 L. J., Q. B. 136; 35 L. T. 906; 25 W. R. 184.)

Reference by consent and in matters of account, &c.

**57.** In any cause or matter (other than a criminal proceeding by the Crown) before the said High Court in which all parties interested, who are under no disability, consent thereto, and also without such consent in any such cause or matter requiring any prolonged examination of documents or accounts, or any scientific or local investigation which cannot, in the opinion of the court or a judge, conveniently be made before a jury, or conducted by the court through its other ordinary officers, the court or a judge may at any time, on such terms as may be thought proper, order any question or issue of fact or any question of account arising therein to be tried either before an official referee, to be appointed as hereinafter provided, or before a special referee to be agreed on between the parties; and any such special referee so agreed on shall have the same powers and duties and proceed in the same manner as an official referee. All such trials before referees shall be conducted in such manner as may be prescribed by rules of court, and subject thereto in such manner as the court or judge ordering the same shall direct.

For rules of court in the subject-matter of this section, see Ord. XXXVI., Rules 29*a*—34, p. 213 *et seq.*

This and the preceding section should be compared with sect. 3 of the C. L. P. Act, 1854 (*post*, p. 501), by which a matter consisting "wholly

*Act of* 1873, *ss.* 57—59.

or in part" of matters of mere account may be referred compulsorily either wholly or in part to an officer of the court, &c. Under that section it has been said that an action cannot be referred, and held that it ought not to be referred if the defendant denies his liability (*Clow* v. *Harper* (C. A.), 3 Ex. D. 198); but under the present section it has been held that where a case is once brought within it, the court may refer not only the issues of account, but all the other issues. (*Ward* v. *Pilley* (C. A.), 5 Q. B. D. 427; 49 L. J., Q. B. 705; 43 L. T. 301; 28 W. R. 937.)

See also *Goodwin* v. *Budden*, 42 L. T. 536, where a question of partnership was referred.

The words "any question of account" receive a liberal construction (*Rowcliffe* v. *Leigh*, 3 Ch. D. 292; 24 W. R. 782); but there ought not to be compulsory reference of any question involving a charge of fraud against one of the parties to the action (*Leigh* v. *Brooks* (C. A.), 5 Ch. D. 592; 46 L. J., Ch. 344; 25 W. R. 401; in this case the plaintiff sought to set aside a sale of pictures on the ground of the fraud of the seller); although there is jurisdiction to refer issues involving such questions. (*Hoch* v. *Burr* (C. A.), 49 L. J., C. P. 665; 43 L. T. 425.)

Power of referees and effect of their findings.

**58.** In all cases of any reference to or trial by referees under this act the referees shall be deemed to be officers of the court, and shall have such authority for the purpose of such reference or trial as shall be prescribed by rules of court or (subject to such rules) by the court or judge ordering such reference or trial; and the report of any referee upon any question of fact on any such trial shall (unless set aside by the court) be equivalent to the verdict of a jury.

For rules of court in the subject-matter of this section, see Ord. XXXVI., Rules 29*a*—34, p. 213 *et seq.*

It is to be observed that sect. 56 points to a report by the referee, while sect. 57 contemplates a trial before him. This section, however, appears to put both on the same footing.

Powers of court with respect to proceedings before referees.

**59.** With respect to all such proceedings before referees and their reports, the court or such judge as aforesaid shall have, in addition to any other powers, the same or the like powers as are given to any court whose jurisdiction is hereby transferred to the said High Court with respect to references to arbitration and proceedings before arbitrators and their awards respectively, by the Common Law Procedure Act, 1854.

The powers referred to under the Common Law Procedure Act, 1854, are contained in sects. 11—17, which deal with arbitrations provided for by a written agreement, one of the parties to which nevertheless brings an action. (See these sections, p. 503, *post.*) There appear to be now the following kinds of references:—(1) Reference for decision under the Common Law Procedure Act, 1854; (2) Reference for report under sect. 56 of the present act; (3) Reference for trial under sect. 57 of the present act; and (4) Reference for trial by notice of either party under Ord. XXXVI., Rule 3. (See *Cruikshank* v. *Floating Swimming Baths Co.*, 1 C. P. D. 260; 45 L. J., C. P. 684; 34 L. T. 733; 24 W. R. 644; *Lloyd* v. *Lewis* (C. A.), 2 Ex. D. 7; 35 L. T. 539; *Longman* v. *East*, 3 C. P. D. 142; and p. 46, *supra.*)

The present section does not expressly apply the three months' limit provided by the 15th section of the C. L. P. Act, 1854, because it only applies "the powers of the court or a judge," but it assumes the power of the judge to set a limit in his order, and empowers him afterwards to enlarge it.

*Act of* 1873, *ss.* 60—63.

District registries may be established by order in council.

* Page 432.

**60.** And whereas it is expedient to facilitate the prosecution in country districts of such proceedings as may be more speedily, cheaply, and conveniently carried on therein, it shall be lawful for her Majesty, by order in council,* from time to time to direct that there shall be district registrars in such places as shall be in such order mentioned for districts to be thereby defined, from which writs of summons for the commencement of actions in the High Court of Justice may be issued, and in which such proceedings may be taken and recorded as are hereinafter mentioned; and her Majesty may thereby appoint that any registrar of any county court, or any registrar or prothonotary or district prothonotary of any local court whose jurisdiction is hereby transferred to the said High Court of Justice, or from which an appeal is hereby given to the said Court of Appeal, or any person who, having been a district registrar of the Court of Probate, or of the Admiralty Court, shall under this act become and be a district registrar of the said High Court of Justice, or who shall hereafter be appointed such district registrar, shall and may be a district registrar of the said High Court for the purpose of issuing such writs as aforesaid, and having such proceedings taken before him as are hereinafter mentioned. This section shall come into operation immediately upon the passing of this act.

The local courts whose jurisdiction is transferred to the High Court of Justice are the Court of Common Pleas at Lancaster and the Court of Pleas at Durham (see sect. 16, p. 8), the former of which, under 32 & 33 Vict. c. 37, s. 5, had district registries assigned to it, with district prothonotaries, having generally the jurisdiction of common law masters. By sect. 13 of the Act of 1875, two persons may be appointed as "joint district registrars." By sect. 22 of the Appellate Jurisdiction Act of 1876, a district registrar may appoint a deputy for three months.

Seals of district registries to be evidence.

**61.** In every such district registry such seal shall be used as the Lord Chancellor shall from time to time, either before or after the time fixed for the commencement of this act, direct, which seal shall be impressed on every writ and other document issued out of or filed in such district registry, and all such writs and documents, and all exemplifications and copies thereof, purporting to be sealed with the seal of any such district registry, shall in all parts of the United Kingdom be received in evidence without further proof thereof.

Powers of district registrars to administer oaths, &c.

**62.** All such district registrars shall have power to administer oaths and perform such other duties in respect of any proceedings pending in the said High Court of Justice or in the said Court of Appeal as may be assigned to them from time to time by rules of court, or by any special order of the court.

[**63.** *Fees to be taken by district registrars. Lord Chancellor, with Treasury, to fix table. Application of Courts of Justice*

(*Salaries and Funds*) *Act*, 1869. Repealed, Act of 1875, sect. 33, and schedule. See now sect. 26 of that act, p. 84, *post*.] *Act of* 1873, *ss.* 63—66.

Proceedings in district registries.

**64.** Subject to the rules of court in force for the time being,* writs of summons for the commencement of actions in the High Court of Justice shall be issued by the district registrars when thereunto required; and unless any order to the contrary shall be made by the High Court of Justice, or by any judge thereof, all such further proceedings, including proceedings for the arrest or detention of a ship, her tackle, apparel, furniture, cargo, or freight, as may and ought to be taken by the respective parties to such action in the said High Court down to and including entry for trial, or (if the plaintiff is entitled to sign final judgment or to obtain an order for an account by reason of the non-appearance of the defendant) down to and including final judgment, or an order for an account, may be taken before the district registrar, and recorded in the district registry, in such manner as may be prescribed by rules of court; and all such other proceedings in any such action as may be prescribed by rules of court shall be taken and if necessary may be recorded in the same district registry.

* See Ord. XXXV., p. 199.

Ord. XIII., Rule 3 (p. 146), provides for judgment by default of appearance, where the writ is especially indorsed with amount of debt claimed, or with a demand for an account. Jurisdiction to take an account is not, it will be observed, given to the district registry by this section; but under sect. 66, an account may be taken in a district registry by order of a judge.

Removal of proceedings from district registries.

**65.** Any party to an action in which a writ of summons shall have been issued from any such district registry shall be at liberty at any time to apply, in such manner as shall be prescribed by rules of court,* to the said High Court or to a judge in chambers of the division of the said High Court to which the action may be assigned, to remove the proceedings from such district registry into the proper office of the said High Court; and the court or judge may, if it be thought fit, grant such application, and in such case the proceedings and such original documents, if any, as may be filed therein, shall upon receipt of such order be transmitted by the district registrar to the proper office of the said High Court, and the said action shall thenceforth proceed in the said High Court in the same manner as if it had been originally commenced by a writ of summons issued out of the proper office in London; or the court or judge, if it be thought right, may thereupon direct that the proceedings may continue to be taken in such district registry.

* See Ord. XXXV., p. 199.

Reference of accounts and inquiries to district registrars.

**66.** It shall be lawful for the court, or any judge of the division to which any cause or matter pending in the said High Court is assigned, if it shall be thought fit, to order that any books or documents may be produced, or any accounts

*Act of* 1873, *ss.* 66—71.

taken or inquiries made, in the office of or by any such district registrar as aforesaid; and in any such case the district registrar shall proceed to carry all such directions into effect in the manner prescribed; and in any case in which any such accounts or inquiries shall have been directed to be taken or made by any district registrar, the report in writing of such district registrar as to the result of such accounts or inquiries may be acted upon by the court, as to the court shall seem fit.

Application of County Courts Act, 1867, ss. 5, 7, 8 and 10.

**67.** The provisions contained in the fifth, seventh, eighth, and tenth sections of the County Courts Act, 1867, shall apply to all actions commenced or pending in the said High Court of Justice in which any relief is sought which can be given in a county court.

By sect. 5 of the County Courts Act, 1867 (30 & 31 Vict. c. 142), if the damages be below a certain amount, no costs are recoverable without the certificate of a judge. By sects. 7 and 10, certain causes may be remitted to a county court, on the application of the defendant; and by sect. 8, proceeding in equity, which might have been commenced in a county court, may be transferred to the county court in which they might have been commenced, on the application of either party. (See these sections at length, with an examination of the many conflicting decisions on sect. 5, "Incorporated Statutes," *post*.)

The words "any relief," &c. mean relief of the *kind*, not relief to the *amount* of which can be given in the county court; if they were construed with reference to the *amount*, a plaintiff, by having claimed more than 50*l*., would, if he recovered less than 20*l*., and failed to obtain a certificate, escape the operation of the restriction as to costs altogether. (*Chatfield* v. *Sedgwick* (C. A.), 4 C. P. D. 459; 27 W. R. 790, per Jessel, M. R., overruling indirectly on this point *Potter* v *Chambers*, 4 C. P. D. 457, and *Neale* v. *Clarke*, 4 Ex. D. 286.) They were inserted to meet such cases as *Gray* v. *West* (L. R., 4 Q. B. 175), in which it had been held that in actions, *e.g.*, slander not triable in a County Court, a successful plaintiff might be deprived of his costs by a judge refusing to "certify." (See *Garnett* v *Bradley*, 3 App. Cas. at p. 971, per Lord Blackburn.)

[**68.** *Power to Queen in council, upon advice of judges, to make rules of court before commencement of Act. Rules so made to be laid before Parliament and annulled upon address from either House.* Repealed, Act of 1875, sect. 33 and schedule. See now sect. 17 of that Act, p. 77, *post*.]

[**69.** *Rules contained in schedule to come into operation upon commencement of Act. Power to judges to alter such rules.* Repealed, with schedule, Act of 1875. See now sect. 16 of that Act, p. 76, *post*.]

[**70.** *Rules of Probate, Divorce, Admiralty, and Bankruptcy Courts to be in force in High Court and Court of Appeal.* Repealed, Act of 1875, sect. 33 and schedule. See now sect. 18 of that Act, p. 78, *post*.]

[**71.** *Criminal procedure, subject to future rules of court, to remain unaltered.* Repealed, Act of 1875. See now sect. 19 of that Act, p. 78, *post*.]

[**72.** *Nothing in Act or schedules or rules of court to affect rules of evidence or juries.* Repealed, Act of 1875. See now sect. 20 of that Act, p. 79, *post.*] *Act of* 1873, *ss.* 72—76.

[**73.** *Saving of existing procedure when not inconsistent with Act, or schedule or rules of court.* Repealed, Act of 1875. See now sect. 21 of that Act, p. 79, *post.*]

[**74.** *Power to judges to make and alter rules of court after commencement of Act.* Repealed, Act of 1875. See now sect. 17 of that Act, p. 77, *post.*]

Annual council of judges of Supreme Court.

**75.** A council of the judges of the Supreme Court, of which due notice shall be given to all the said judges, shall assemble once at least in every year, on such day or days as shall be fixed by the Lord Chancellor, with the concurrence of the Lord Chief Justice of England, for the purpose of considering the operation of this act and of the rules of court for the time being in force, and also the working of the several offices and the arrangements relative to the duties of the officers of the said courts respectively, and of inquiring and examining into any defects which may appear to exist in the system of procedure or the administration of the law in the said High Court of Justice or the said Court of Appeal, or in any other court from which any appeal lies to the said High Court or any judge thereof, or to the said Court of Appeal: and they shall report annually to one of her Majesty's principal secretaries of state what (if any) amendments or alterations it would in their judgment be expedient to make in this act, or otherwise relating to the administration of justice, and what other provisions (if any) which cannot be carried into effect without the authority of parliament it would be expedient to make for the better administration of justice. Any extraordinary council of the said judges may also at any time be convened by the Lord Chancellor.

Report to Secretary of State.

Extraordinary council.

The first report made public under this section was that made in December, 1880, under s. 32, *ante*, p. 31, with a view to merging the Common Pleas and Exchequer Divisions in the Queen's Bench Division.

It is believed that no "annual meeting" under the section has as yet (February, 1881) taken place.

Acts of parliament relating to former courts to be read as applying to courts under this act.

**76.** All acts of parliament relating to the several courts and judges, whose jurisdiction is hereby transferred to the said High Court of Justice and the said Court of Appeal respectively, or wherein any of such courts or judges are mentioned or referred to, shall be construed and take effect, so far as relates to anything done or to be done after the commencement of this act, as if the said High Court of Justice or the said Court of Appeal, and the judges thereof respectively, as the case may be, had been named therein instead of such courts or judges whose jurisdiction is so transferred respec-

*Act of* 1873, *ss.* 76, 77.

Construction of acts as to concurrence of judges.

tively; and in all cases not hereby expressly provided for in which, under any such act, the concurrence or the advice or consent of the judge or any judges, or of any number of the judges, of any one or more of the courts whose jurisdiction is hereby transferred to the High Court of Justice is made necessary to the exercise of any power or authority capable of being exercised after the commencement of this act, such power or authority may be exercised by and with the concurrence, advice, or consent of the same or a like number of judges of the said High Court of Justice; and all general and other commissions, issued under the acts relating to the Central Criminal Court or otherwise, by virtue whereof any judges of any of the courts whose jurisdiction is so transferred may, at the commencement of this act, be empowered to try, hear, or determine any causes or matters, criminal or civil, shall remain and be in full force and effect, unless and until they shall respectively be in due course of law revoked or altered.

Sects. 151 and 158 of the C. L. P. Act, 1852, as to appeals to the House of Lords (*Justice* v. *Mersey Steel and Iron Co.*, 1 C. P. D. 575), and s. 19 of the C. L. P. Act, 1852, as to service of notice of writ upon a foreigner out of the jurisdiction, have been held to be kept alive by this section, as to which see also *Commissioners of Sewers* v. *Gellatly*, 24 W. R. 1059.

## PART V.

### *Officers and Offices.*

Transfer of existing staff of officers to Supreme Court.

**77.** The Queen's Remembrancer, and all masters, secretaries, registrars, clerks of records and writs, associates, prothonotaries, chief and other clerks, commissioners to take oaths or affidavits, messengers and other officers and assistants at the time of the commencement of this act attached to any court or judge whose jurisdiction is hereby transferred to the High Court, or to the Court of Appeal, and also all registrars, clerks, officers, and other persons at the time of the commencement of this act engaged in the preparation of commissions or writs, or in the registration of judgments or any other ministerial duties in aid of, or connected with, any court, the jurisdiction of which is hereby transferred to the said courts respectively, shall, from and after the commencement of this act, be attached to the Supreme Court, consisting of the said High Court of Justice and the said Court of Appeal: provided, that all the duties with respect to appeals from the Court of Chancery of the county palatine of Lancaster which are now performed by the clerk of the council of the duchy of Lancaster shall be performed by the registrars, taxing masters, and other officers by whom like duties are discharged in the Supreme Court; and the said clerk of the council of the duchy of Lancaster shall not be an officer attached to the said court.

The officers so attached shall have the same rank and hold their offices by the same tenure and upon the same terms and conditions, and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this act had not passed; and any such officer who is removable by the court to which he is now attached shall be removable by the court to which he shall be attached under this act, or by the majority of the judges thereof. *Act of* 1873, s. 77. Savings as to salaries, &c.

The existing registrars and clerks to the registrars in the chancery registrars' office shall retain any right of succession secured to them by act of parliament, so as to entitle them in that office, or in any substituted office, to the succession to appointments with similar or analogous duties and with equivalent salaries.

The business to be performed in the High Court of Justice and in the Court of Appeal respectively, or in any divisional or other court thereof, or in the chambers of any judge thereof, other than that performed by the judges, shall be distributed among the several officers attached to the Supreme Court by this section in such manner as may be directed by rules of court;* and such officers shall perform such duties in relation to such business as may be directed by rules of court, with this qualification, that the duties required to be performed by any officer shall be the same, or duties analogous to those which he performed previously to the passing of this act; and, subject to such rules of court, all such officers respectively, shall continue to perform the same duties, as nearly as may be, in the same manner as if this act had not passed. Distribution of business amongst officers.

* See Ord. LX., p. 264.

All secretaries, clerks, and other officers attached to any existing judge who under the provisions of this act shall become a judge of the High Court of Justice, or of the Court of Appeal, shall continue attached to such judge and shall perform the same duties as those which they have hitherto performed, or duties analogous thereto; and all such last-mentioned officers shall have the same rank and hold their offices by the same tenure, and upon the same terms and conditions, and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this act had not passed: provided that the Lord Chancellor may, with the consent of the treasury, increase the salary of any existing officer whose duties are increased by reason of the passing of this act. Increase of salary.

Upon the occurrence of a vacancy in the office of any officer coming within the provisions of this section, the Lord Chancellor, with the concurrence of the treasury, may, in the event of such office being considered unnecessary, abolish the same, or may reduce the salary, or alter the designation or duties thereof, notwithstanding that the patronage thereof may be vested in an existing judge. Nothing in this act contained Abolition of offices.

*Act of* 1873, *ss.* 77, 78.

shall interfere with the office of marshal attending any commissioner of assize.

Marshal.

See Act of 1879 (Officers), p. 108, *post*.

For the regulation of the office of the Queen's Remembrancer, see 22 & 23 Vict. c. 21. As to chief clerks in chancery, see 15 & 16 Vict. c. 80. As to the marshal, see 15 & 16 Vict. c. 73, s. 7, and as to clerks of assize and associates, see 15 & 16 Vict. c. 73, and 32 & 33 Vict. c. 89. By R. S. C., Dec. 1876, Rule 11 (Ord. LVIII., Rule 19), it is the duty of the officers of the Crown Office to enter appeals from inferior courts.

See Act of 1875, s. 34, p. 101, *post*, for an important amendment of the last paragraph of the present section.

Officers of courts at Lancaster and Durham.

78. The existing Queen's counsel of the county palatine of Lancaster shall for the future have the same precedence in the county, and the existing prothonotaries and district prothonotaries, and other officers of the Court of Common Pleas at Lancaster and the Court of Pleas at Durham respectively, and their successors, shall (subject to rules of court) perform the same or the like duties and exercise the same or the like powers and authorities in respect of all causes and matters depending in those courts respectively at the commencement of this act, and also in respect of all causes and matters which may afterwards be commenced in the High Court of Justice in the manner heretofore practised in the said Court of Common Pleas at Lancaster and the said Court of Pleas at Durham respectively, as at the commencment of this act may lawfully be performed and exercised by them respectively under any acts of parliament for the time being in force with respect to the said last-mentioned courts respectively, or under any other authority; and all powers in respect of any such prothonotaries, district prothonotaries, or other officers of the Court of Common Pleas at Lancaster, which at the commencement of this act may be vested by law in the Chancellor of the duchy and county palatine of Lancaster, under any such act of parliament or otherwise, and to which the concurrence of any other authority may not be required, shall and may be exercised after the commencement of this act by the Lord Chancellor; and all the powers of making or publishing any general rules or orders with respect to the powers or duties of such prothonotaries, district prothonotaries, or other officers of the said Court of Common Pleas at Lancaster or the said Court of Pleas at Durham, or with respect to the business of the said court respectively, or with respect to any fees to be taken therein, or otherwise with reference thereto, which under any such act as aforesaid or otherwise by law may be vested in the chancellor of the duchy and county palatine of Lancaster, with the concurrence of any judges or judge, or in any other authority, shall be exercised after the commencement of this act in the manner hereby provided with respect to rules of court to be made under this act, and (in all cases in which the sanction of the treasury is now

Transfer of powers of Chancellor of County Palatine of Lancaster.

As to making rules with respect to district prothonotaries.

required) with the sanction of the treasury; and all provisions made by any such acts as aforesaid, or otherwise for or with respect to the remuneration of any such prothonotaries, district prothonotaries, or other officers as aforesaid, shall remain and be in full force and effect until the same shall be altered under the provisions of this act, or otherwise by lawful authority.

By sect. 16, sub-sects. 9 and 10, the jurisdiction of the Courts here mentioned is transferred to the High Court, and by sect. 99 the counties of Lancaster and Durham cease to be counties palatine "so far as respects the issue of commissions of assize."

By Order in Council, II. (p. 428, *post*), of 12th August, 1875, district prothonotaries are made district registrars. By Order in Council of Dec. 9th, 1876 (W. N. 1876), the office of district prothonotary at Manchester is abolished, and that of district registrar substituted.

Personal officers of future judges.

**79.** Each of the judges of the High Court of Justice, and of the ordinary judges of the Court of Appeal, appointed respectively after the commencement of this act, and also such of the ordinary judges of the Court of Appeal as have no similar officers at the time of the commencement of this act, shall have such officers as hereinafter mentioned, who shall be attached to his person as such judge, and appointed and removable by him at his pleasure, and who shall respectively receive the salaries hereinafter mentioned; (that is to say,)

To the Lord Chief Justice of England, the Master of the Rolls, *the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer* (*q*) respectively, there shall be attached a secretary, whose salary shall be five hundred pounds per annum, a principal clerk, whose salary shall be four hundred pounds per annum, and a junior clerk, whose salary shall be two hundred pounds per annum. To each of the other judges of the High Court of Justice, and to each of the ordinary judges of the Court of Appeal, there shall be attached a principal clerk, whose salary shall be four hundred pounds per annum, and, in the case of the judges of the High Court of Justice, a junior clerk, whose salary shall be two hundred pounds per annum.

Secretaries. Principal clerks. Junior clerks.

Such one or more of the officers so attached to each of the said judges, as such judge shall think fit, shall be required, while in attendance on such judge, to discharge, without further remuneration, the duties of crier in court or on circuit, or of usher or train bearer. The duties of chamber clerks, so far as relates to business transacted in chambers by judges appointed after the commencement of this act, shall be performed by officers of the court in the permanent civil service of the Crown.

Chamber clerks.

(*q*) Words in italics impliedly repealed by Order in Council under s. 32, *ante*.

*Act of* 1873, *ss.* 79—83.

By sect. 77 nothing in the act contained is to "interfere with the office of marshal attending any commisioner of assize." The "personal officers" appointed under this section are expressly excepted, by sect. 85, from the regulations as to pension, &c. contained in that section. As to chamber clerks, see sect. 35 of the Act of 1875, p. 91, *post*.

Compensation of officers in certain cases.

**80.** Any existing officer attached to any existing court or judge whose jurisdiction is abolished or transferred by this act, who is paid out of fees and whose emoluments are affected by the passing of this act, shall be entitled to prefer a claim to the treasury; and the treasury, if it shall consider his claim to be established, shall have power to award to him such sum, either by way of compensation, or as an addition to his salary, as it thinks just, having regard to the tenure of office by such officer and to the other circumstances of the case.

By sect. 100, "existing" means "existing at the time appointed for the commencement of the act," *i.e.* November 2nd, 1874. This date must now be read as November 1st, 1875. See Act of 1875, sect. 2.

Doubts as to status of officers.

**81.** Where a doubt exists as to the position under this act of any existing officer attached to any existing court or judge affected by this act, such doubt may be determined by rules of court: subject to this proviso, that such rules of court shall not alter the tenure of office, rank, pension (if any), or salary of such officer, or require him to perform any duties other than duties analogous to those which he has already performed.

Commissioners for oaths.

**82.** Every person who at the commencement of this act shall be authorized to administer oaths in any of the courts whose jurisdiction is hereby transferred to the High Court of Justice shall be a commissioner to administer oaths in all causes and matters whatsoever which may from time to time be depending in the said High Court or in the Court of Appeal.

"Commissioners to take oaths or affidavits" have been already attached to the Supreme Court by sect. 77, of which in that respect this section is an amplification, except that sect. 77 includes the Court of Appeal. The effect of the two sections together is to make an oaths' commissioner in any of the old courts an oaths' commissioner in all the new ones indiscriminately. The original jurisdiction of the Lord Chancellor or Masters in Lunacy, however, not being a transferred jurisdiction (see sect. 17, sub-sect. 3, sect. 18, sub-sect. 5), the power to administer oaths in lunacy will remain in the commissioners for oaths in lunacy alone.

By sect. 84, "all commissioners to take oaths or affidavits" in the Supreme Court shall be appointed by the Lord Chancellor.

"It is understood that commissions will" under the authority of this enactment "be granted to solicitors of six years' standing and of good character, without limit of district." Braithwaite on Oaths, p. 3.

Official referees to be appointed.

**83.** There shall be attached to the Supreme Court permanent officers to be called official referees, for the trial of such

questions as shall under the provisions of this act be directed to be tried by such referees. The number and the qualifications of the persons to be so appointed from time to time, and the tenure of their offices, shall be determined by the Lord Chancellor, with the concurrence of the presidents of the divisions of the High Court of Justice, or a majority of them (of which majority the Lord Chief Justice of England shall be one), and with the sanction of the treasury. Such official referees shall perform the duties entrusted to them in such places, whether in London or in the country, as may from time to time be directed or authorized by any order of the said High Court or of the Court of Appeal; and all proper and reasonable travelling expenses incurred by them in the discharge of their duties shall be paid by the treasury out of moneys to be provided by parliament (*r*).

The official referees are, under the third paragraph of sect. 84, to be appointed by the Lord Chancellor. The salary attached to the office is, under sect. 85, to be determined by the treasury, with the Lord Chancellor's concurrence, and is at present (February, 1881) 1,500*l.* per annum.

The following four barristers have been appointed official referees:— Mr. G. M. Dowdeswell, Q.C.; Mr. James Anderson, Q.C.; Mr. C. M. Roupell; and Mr. H. W. Verey. As to distribution of business amongst official referees, see Ord. XXXVI., Rule 29*a*, p. 213; and as to fees, see Lord Chancellor's Order of April, 1877, p. 453, *post*, revoking former Order of Feb. 1876.

Duties, appointment and removal of officers of Supreme Court.

**84.** Subject to the provisions in this act contained with respect to existing officers of the courts whose jurisdiction is hereby transferred to the Supreme Court, there shall be attached to the Supreme Court such officers as the Lord Chancellor with the concurrence of the presidents of the divisions of the High Court of Justice, or the major part of them, of which majority the Lord Chief Justice of England shall be one, and with the sanction of the treasury, may from time to time determine.

Such of the said several officers respectively as may be thought necessary or proper for the performance of any special duties, with respect either to the Supreme Court generally, or with respect to the High Court of Justice or the Court or Appeal, or with respect to any one of the divisions of the said High Court, or with respect to any particular judge or judges of either of the said courts, may by the same authority, and with the like sanction as aforesaid, be attached to the said respective courts, divisions, and judges accordingly.

Appointment of officers.

All officers assigned to perform duties with respect to the Supreme Court generally, or attached to the High Court of Justice, or the Court of Appeal, and all commissioners to take oaths or affidavits in the Supreme Court, shall be appointed by the Lord Chancellor.

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(*r*) As to presidents of divisions, see ss. 31, 32, and Order in Council under s. 32, p. 438, *post*.

*Act of* 1873, *ss.* 84—86.

All officers attached to the Chancery Division of the said High Court, who have been heretofore appointed by the Master of the Rolls, shall continue, while so attached, to be appointed by the Master of the Rolls.

All other officers attached to any division of the said High Court shall be appointed by the president of that division.

All officers attached to any judge shall be appointed by the judge to whom they are attached.

Removal of officers.

Any officer of the Supreme Court (other than such officers attached to the person of a judge as are hereinbefore declared to be removable by him at his pleasure), may be removed by the person having the right of appointment to the office held by him, with the approval of the Lord Chancellor, for reasons to be assigned in the order of removal.

The authority of the Supreme Court over all or any of its officers may be exercised in and by the said High Court and the said Court of Appeal respectively, and also in the case of officers attached to any division of the High Court by the president of such division, with respect to any duties to be discharged by them respectively (*s*).

Salaries and pensions of officers.

[**85.** *There shall be paid to every official referee and other salaried officer appointed in pursuance of this act such salary out of moneys to be provided by parliament as may be determined by the treasury with the concurrence of the Lord Chancellor.*

*An officer attached to the person of a judge shall not be entitled to any pension or compensation in respect of his retirement from or the abolition of his office, except so far as he may be entitled thereto independently of this act; but every other officer to be hereafter appointed in pursuance of this part of this act, and whose whole time shall be devoted to the duties of his office, shall be deemed to be employed in the permanent civil service of her Majesty, and shall be entitled, as such, to a pension or compensation in the same manner, and upon the same terms and conditions, as the other permanent civil servants of her Majesty are entitled to pension or compensation*] (*t*).

*Superannuation.*] For the civil service superannuation allowance and compensation on loss of office, see 4 & 5 Will. 4, c. 24; 22 Vict. c. 26, and 23 & 24 Vict. c. 89. The ordinary scale fixed by sect. 2 of 22 Vict. c. 26 (The Superannunation Act, 1859) is, after ten years' service, ten-sixtieths of the salary of the office vacated, with one additional sixtieth of such salary for every year of service up to the fortieth. For the procedure before the act as to the superannuation allowances of officers of courts of justice, see 29 & 30 Vict. c. 68.

The officers attached to the person of a judge excluded from the operation of this section are those mentioned in sect. 79, *ante*.

Patronage not otherwise provided for.

**86.** Subject to the provisions hereinbefore contained, any rights of patronage and other rights or powers incident to any

(*s*) See also Judicature (Officers) Act, 1879, 42 & 43 Vict. c. 78, *post*.

(*t*) Repealed by act of 1879 (Officers), s. 29, *post*, p. 115. See s. 15 of that act, *post*, p. 112.

court, or to the office of any judge of any court whose jurisdiction is transferred to the said High Court of Justice, or to the said Court of Appeal, in respect of which rights of patronage or other rights or powers no provision is or shall be otherwise made by or under the authority of this act, shall be exercised as follows, that is to say: if incident to the office of any existing judge shall continue to be exercised by such existing judge during his continuance in office as a judge of the said High Court or of the Court of Appeal, and after the death, resignation, or removal from office of such existing judge shall be exercised in such manner as her Majesty may by sign manual direct.

*Act of* 1873, *ss.* 86—88.

Solicitors and attorneys.

"Solicitors of Supreme Court."

**87.** From and after the commencement of this act all persons admitted as solicitors, attorneys, or proctors of or by law empowered to practise in any court, the jurisdiction of which is hereby transferred to the High Court of Justice or the Court of Appeal, shall be called solicitors of the Supreme Court, and shall be entitled to the same privileges and be subject to the same obligations, so far as circumstances will permit, as if this act had not passed; and all persons who from time to time, if this act had not passed, would have been entitled to be admitted as solicitors, attorneys, or proctors of or been by law empowered to practise in any such courts, shall be entitled to be admitted and to be called solicitors of the Supreme Court, and shall be admitted by the Master of the Rolls, and shall, as far as circumstances will permit, be entitled as such solicitors to the same privileges and be subject to the same obligations as if this act had not passed.

Jurisdiction of court over solicitors.

Any solicitors, attorneys, or proctors to whom this section applies shall be deemed to be officers of the Supreme Court; and that court, and the High Court of Justice, and the Court of Appeal respectively, or any division or judge thereof, may exercise the same jurisdiction in respect of such solicitors or attorneys as any one of her Majesty's superior courts of law or equity might previously to the passing of this act have exercised in respect of any solicitor or attorney admitted to practise therein.

By the Legal Practitioners Act, 1876 (39 & 40 Vict. c. 66), solicitors may appear as proctors in the provincial courts of Canterbury and York.

## Part VI.

### *Jurisdiction of Inferior Courts.*

Order in council may confer equitable jurisdiction on inferior courts.

**88.** If shall be lawful for her Majesty from time to time by order in council to confer on any inferior court of civil jurisdiction, the same jurisdiction in equity and in admiralty, respectively, as any county court now has, or may hereafter

*Act of* 1873, *ss.* 88—90.

have, and such jurisdiction, if and when conferred, shall be exercised in the manner by this act directed.

No order in council under this section has as yet (February, 1881) been issued.

By 28 & 29 Vict. c. 99, county courts have certain jurisdiction in equity where the claim in or subject-matter of the suit does not exceed 500*l.*; and by 31 & 32 Vict. c. 71, any county court may have jurisdiction conferred on it by order in council to try claims for salvage or damage to cargo, or damage by collision, not exceeding 300*l.* and for towage, necessaries, or wages, not exceeding 150*l.*, and also claims of that nature to an unlimited amount by consent of parties. The jurisdiction in admiralty was further extended by 32 & 33 Vict. c. 51, to claims not exceeding 300*l.* arising out of charter-parties, &c.

Concurrent administration of law and equity in inferior courts.

**89.** Every inferior court which now has or which may after the passing of this act have jurisdiction in equity, or at law and in equity, and in admiralty respectively, shall, as regards all causes of action within its jurisdiction for the time being, have power to grant, and shall grant in any proceeding before such court, such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counter-claim, equitable or legal (subject to the provision next hereinafter contained), in as full and ample a manner as might and ought to be done in the like case by the High Court of Justice.

This section confers upon a county court, in matters within its jurisdiction, the power to grant an injunction against a nuisance, and to commit to prison for disobedience thereof (*Martin* v. *Bannister* (C. A.), 4 Q. B. D. 491; 48 L. J., Q. B. 667; 28 W. R. 143); but it also has the effect of depriving a county court before which an administration action is pending of the power of staying proceedings (under the County Court Equitable Jurisdiction Act, 1865, 28 & 29 Vict. c. 99, s. 1) in respect of debts provable in the administration action. (*Cobbold* v. *Pryke*, 4 Ex. D. 315; 48 L. J., Ex. 9; 28 W. R. 259.)

For the concurrent administration of law and equity prescribed by this section to all county courts, and to such other inferior courts as may have the jurisdiction mentioned in sect. 8 conferred upon them, see sect. 25 and note, p. 20 *et seq.*

Defence in inferior court involving matter beyond jurisdiction.

**90.** Where in any proceeding before any such inferior court any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the court, such defence or counter-claim shall not affect the competence or the duty of the court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the court has jurisdiction to administer shall be given to the defendant upon any such counter-claim: Provided always, that in such case it shall be lawful for the High Court, or any division or judge thereof, if it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such inferior court to the High Court, or

to any division thereof; and in such case the record in such proceeding shall be transmitted by the registrar, or other proper officer, of the inferior court to the said High Court; and the same shall thenceforth be continued and prosecuted in the said High Court as if it had been originally commenced therein.

*Act of* 1873, *ss.* 90—93.

Under this and the preceding section, the inferior court may entertain a counter-claim in matters beyond the local jurisdiction; but may grant relief on the counter-claim only up to the amount of the claim of the plaintiff. (*Davis* v. *Flagstaff, &c. Co. of Utah* (C. A.), 3 C. P. D. 228; 47 L. J., C. P. 503; 38 L. T. 769; 26 W. R. 431.)

**91.** The several rules of law enacted and declared by this act shall be in force and receive effect in all courts whatsoever in England, so far as the matters to which such rules relate shall be respectively cognizable by such courts.

New rules of law to apply to all courts.

It was held in *King* v. *Hawkesworth*, 4 Q. B. D. 371; 48 L. J., Q. B. 484; 41 L. T. 411; 27 W. R. 660, that this section applies Ord. LV. as to costs (p. 250, *post*) to the Liverpool Court of Passage, so that a plaintiff who recovered a shilling in an action for slander tried by a jury in that court is entitled to his costs unless the judge order otherwise; but it is submitted that "the several rules of law" applied to all courts by this section are those "declared and enacted by sect. 25." (See that section and note, p. 20 *et seq.*)

For the Consolidated County Court Rules, 1875, which give effect to this and the preceding section, see Pollock & Nicol's County Court Acts, ed. 8.

## Part VII.

### *Miscellaneous Provisions.*

**92.** All books, documents, papers, and chattels in the possession of any court, the jurisdiction of which is hereby transferred to the High Court of Justice or to the Court of Appeal, or of any officer or person attached to any such court, as such officer, or by reason of his being so attached, shall be transferred to the Supreme Court, and shall be dealt with by such officer or person in such manner as the High Court of Justice or the Court of Appeal may by order direct; and any person failing to comply with any order made for the purpose of giving effect to this section shall be guilty of a contempt of the Supreme Court.

Transfer of books and papers to Supreme Court.

**93.** This act, except as herein is expressly directed, shall not, unless or until other commissions are issued in pursuance thereof, affect the circuits of the judges or the issue of any commissions of assize, nisi prius, oyer and terminer, gaol delivery, or other commissions for the discharge of civil or criminal business on circuit or otherwise, or any patronage vested in any judges going circuit, or the position, salaries or

Saving as to circuits, &c.

*Act of* 1873, *ss.* 93—97.

duties of any officers transferred to the Supreme Court who are now officers of the superior courts of common law, and who perform duties in relation to either the civil or criminal business transacted on circuit.

By sect. 16, sub-sect. 2, the jurisdiction of the court created by the commissions mentioned in this section is transferred to the High Court of Justice, and by sect. 29, commissions of assize may be issued, assigning to any judge the duty of trying causes "within any place or district specially fixed for the purpose."

For the power to regulate circuits by order in council, see Act of 1875, sect. 23, p. 80, and note.

Saving as to Lord Chancellor.

**94.** This act, except so far as herein is expressly directed, shall not affect the office or position of Lord Chancellor; and the officers of the Lord Chancellor shall continue attached to him in the same manner as if this act had not passed; and all duties, which any officer of the Court of Chancery may now be required to perform in aid of any duty whatsoever of the Lord Chancellor, may in like manner be required to be performed by such officer when transferred to the Supreme Court and by his successors.

Saving as to Chancellor of Lancaster.

**95.** This act, except so far as is herein expressly directed, shall not affect the offices, position, or functions of the Chancellor of the county palatine of Lancaster.

Saving as to Chancellor of the Exchequer,

**96.** The Chancellor of the Exchequer shall not be a judge of the High Court of Justice, or of the Court of Appeal, and shall cease to exercise any judicial functions hitherto exercised by him as a judge of the Court of Exchequer; but save as aforesaid he shall remain in the same position as to duties and salary, and other incidents of his office, as if this act had not passed. The same order and course with respect to the appointment of sheriffs shall be used and observed in the Exchequer Division of the said High Court as has been heretofore used and observed in the Court of Exchequer.

and appointment of sheriffs.

By 14 Edw. 3, st. 1, c. 7, it was enacted that the appointment should be made yearly on the morrow of All Souls at the exchequer "by the chancellor, treasurer, and chief baron of the exchequer, taking to them the chief justices of the one bench and of the other, if they be present;" and by 24 Geo. 2, c. 48, s. 12, the day of appointment was changed to "the morrow [November 12] of St. Martin," the previous statute being confirmed in other respects.

The effect of the Order in Council, under s. 32, *ante*, p. 32, is to transfer the functions of the Exchequer Division in the matter to the Queen's Bench Division.

Saving as to Lord Treasurer and office of the receipt of exchequer.

**97.** Nothing in this act contained shall affect the office of Lord Treasurer, except that any Lord Treasurer shall not hereafter exercise any judicial functions hitherto exercised by him as a judge of the Court of Exchequer; and nothing in this act shall affect the office of the receipt of the exchequer.

Provisions as to Great Seal being in commission.

**98.** When the Great Seal is in commission, the lords commissioners shall represent the Lord Chancellor for the purposes of this act, save that as to the presidency of the Court of Appeal, and the appointment or approval of officers, or the sanction to any order for the removal of officers, or any other act to which the concurrence or presence of the Lord Chancellor is hereby made necessary, the powers given to the Lord Chancellor by this act may be exercised by the senior lord commissioner for the time being.

Provision as to commissions in counties palatine.

**99.** From and after the commencement of this act, the counties palatine of Lancaster and Durham shall respectively cease to be counties palatine, so far as respects the issue of commissions of assize, or other like commissions, but not further or otherwise; and all such commissions may be issued for the trial of all causes and matters within such counties respectively in the same manner in all respects as in any other counties of England and Wales.

Interpretation of terms.

**100.** In the construction of this act, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned shall have, or include, the meanings following: (that is to say)—

"Lord Chancellor" shall include Lord Keeper of the Great Seal;

"The High Court of Chancery" shall include the Lord Chancellor;

"The Court of Appeal in Chancery" shall include the Lord Chancellor as a judge on rehearing or appeal;

"London Court of Bankruptcy" shall include the chief judge in bankruptcy;

"The Treasury" shall mean the Commissioners of her Majesty's Treasury for the time being, or any two of them;

"Rules of Court" shall include forms;

"Cause" shall include any action, suit, or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by the crown; "Cause."

"Suit" shall include action;

"Action" shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by rules of court; and shall not include a criminal proceeding by the crown; "Action."

"Plaintiff" shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons or otherwise;

*Act of* 1873, *s.* 100.

"Petitioner" shall include every person making any application to the court, either by petition, motion, or summons, otherwise than as against any defendant;

"Defendant" shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings;

"Party" shall include every person served with notice of, or attending any proceeding, although not named on the record;

"Matter." "Matter" shall include every proceeding in the court not in a cause;

"Pleading." "Pleading" shall include any petition or summons, and also shall include the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant;

"Judgment" shall include decree;

"Order" shall include rule;

"Oath" shall include solemn affirmation and statutory declaration;

"Crown cases reserved" shall mean such questions of law reserved in criminal trials as are mentioned in the act of the eleventh and twelfth years of her Majesty's reign, chapter seventy-eight;

"Pension" shall include retirement and superannuation allowance;

"Existing." "Existing" shall mean existing at the time appointed for the commencement of this act.

By Order LXIII. (p. 274) the provisions of this section apply to the Rules of Court.

[*Schedule of Rules of Procedure.*

Repealed by Act of 1875, s. 33, and Schedule 2.]

The 58 rules of this schedule reappear, mostly word for word, amongst the Rules of Court enacted by the schedule to the Act of 1875.

THE

# SUPREME COURT OF JUDICATURE ACT, 1875.

38 & 39 Vict. c. 77.

*An Act to amend and extend the Supreme Court of Judicature Act, 1873.* [11th August, 1875.]

Whereas it is expedient to amend and extend the Supreme Court of Judicature Act, 1873:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Act to be construed as one with Act of 1873.

**1.** This act shall, so far as is consistent with the tenor thereof, be construed as one with the Supreme Court of Judicature Act, 1873, (in this act referred to as the principal act,) and together with the principal act may be cited as the Supreme Court of Judicature Acts, 1873 and 1875, and this act may be cited separately as the Supreme Court of Judicature Act, 1875.

For the principal changes in the Act of 1873 effected by the present act, see sects. 2, 3, 4 and 9. The wholly repealed portions of the Act of 1873 are sects. 6 (constituting the Court of Appeal), 9, 10, 25, sub-sect. 1 (by sect. 10 of this act), 35, 48, 53, 54 (by sect. 4 of this act), 63, 68, 69, 70, 71, 72, 73, 74, and the whole of the schedule, which last contained Rules of Court now embodied in the schedule to the present act.

Commencement of act. Suspension of parts of Act of 1873.

**2.** This act, except any provision thereof which is declared to take effect before the commencement of this act, shall commence and come into operation on the first day of November, 1875.

*Sections twenty, twenty-one, and fifty-five of the principal act shall not commence or come into operation until the first day of November,* 1876, *and until the said sections come into operation, an appeal may be brought to the House of Lords from any judgent or order of the Court of Appeal hereinafter mentioned in*

*Act of* 1875, *ss.* 2—4.

*any case in which any appeal or error might now be brought to the House of Lords or to her Majesty in council from a similar judgment, decree, or order of any court or judge whose jurisdiction is by the principal act transferred to the High Court of Justice or the Court of Appeal, or in any case in which leave to appeal shall be given by the Court of Appeal.*

The portion italicised is repealed by sect. 24 of the Act of 1876. Sect. 20 of the principal act enacted that no appeal should lie to the House of Lords, and sects. 21 and 55 provided for the transfer of the jurisdiction of the Judicial Committee of the Privy Council to the Court of Appeal.

Number of judges of High Court not to be at present reduced.

* Page 3.

3. Whereas by section five * of the principal act it is provided as follows: "That if at the commencement of this act, the number of puisne justices and junior barons who shall become judges of the said High Court shall exceed twelve in the whole, no new judge of the said High Court shall be appointed in the place of any such puisne justice or junior baron who shall die or resign while such whole number shall exceed twelve, it being intended that the permanent number of judges of the said High Court shall not exceed twenty-one;" and whereas, having regard to the state of business in the several courts whose jurisdiction is transferred by the principal act to the High Court of Justice, it is expedient that the number of judges thereof should not at present be reduced: be it enacted, that so much of the said section as is hereinbefore recited shall be repealed.

Lord Chancellor not permanent judge of High Court.

The Lord Chancellor shall not be deemed to be a permanent judge of that court, and the provisions of the said section relating to the appointment and style of the judges of the said High Court shall not apply to the Lord Chancellor.

By the Act of 1877, 40 Vict. c. 9, p. 106, *post*, an additional judge of the High Court may be appointed.

By 15 & 16 Vict. c. 80, s. 60, the Lord Chancellor may deliver written judgment within six weeks after resignation.

Constitution of Court of Appeal.

4. Her Majesty's Court of Appeal in this act and in the principal act referred to as the Court of Appeal shall be constituted as follows: there shall be five ex officio judges thereof, and also so many ordinary judges, *not exceeding three at any one time* (*a*), as her Majesty shall from time to time appoint.

Ex officio judges.

The ex officio judges shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer.

Ordinary judges.

The first ordinary judges of the said court shall be the present Lords Justices of Appeal in Chancery, and such one

(*a*) Repealed: Act of 1876, s. 15, p. 99.

other person as her Majesty may be pleased to appoint by letters patent. Such appointment may be made either before or after the commencement of this act, but if made before shall take effect at the commencement of the act. *Act of* 1875, *ss.* 4, 5.

The ordinary judges of the Court of Appeal shall be styled Justices of Appeal. Style.

The Lord Chancellor may by writing addressed to the president of any one or more of the following divisions of the High Court of Justice, that is to say, the Queen's Bench Division, *the Common Pleas Division, the Exchequer Division* (*a*), and the Probate, Divorce, and Admiralty Division, request the attendance at any time, except during the times of the spring or summer circuits, of an additional judge from such division or divisions (not being an ex officio judge or judges of the Court of Appeal) at the sittings of the Court of Appeal, and a judge, to be selected by the division from which his attendance is requested, shall attend accordingly. Additional judges. Not to be summoned during circuits.

Every additional judge, during the time that he attends the sittings of her Majesty's Court of Appeal, shall have all the jurisdiction and powers of a judge of the said Court of Appeal, but he shall not otherwise be deemed to be a judge of the said court, or to have ceased to be a judge of the division of the High Court of Justice to which he belongs.

Section fifty-four* of the principal act is hereby repealed, and instead thereof the following provision shall take effect: No judge of the said Court of Appeal shall sit as a judge on the hearing of an appeal from any judgment or order made by himself, or made by any divisional court of the High Court of which he was and is a member. * Page 45. Judges not to sit on appeal from their own judgments.

Whenever the office of an ordinary judge of the Court of Appeal becomes vacant, a new judge may be appointed thereto by her Majesty by letters patent.

The Court of Appeal established by this section is an intermediate one, whereas that originally established by the Act of 1873 (sect. 6, p. 4) was a court of final appeal. The ex officio judges are the same as those named in the Act of 1873. Sir Richard Baggallay, A.-G., was appointed Justice of Appeal shortly after the passing of the act. The power of the Lord Chancellor to request the attendance of "additional" judges survives, notwithstanding the appointment of three "additional ordinary" judges under sect. 15 of the Act of 1876 (p. 99, *post*). (For the jurisdiction of the Court of Appeal, see Act of 1873, sect. 18, p. 10, *ante*.)

The words "and is" in the last paragraph but one of this section must, it seems, be rejected as insensible. A judge may sit on appeal from any judgment to which he himself was not party. (*Fisher* v. *Val de Travers, &c. Co.*, 1 C. P. D. 259; 45 L. J., C. P. 135.) In case of a further appeal to the House of Lords, the restriction does not exist.

5. All the judges of the High Court of Justice, and of the Court of Appeal respectively, with the exception of the Lord Chancellor, shall hold their offices as such judges respectively during good behaviour, subject to a power of removal by her Tenure of office of judges.

(*a*) Merged in Q. B. D. See p. 438.

*Act of* 1875, *ss.* 5, 6.

Judge not to sit in House of Commons.

Majesty, on an address presented to her Majesty by both Houses of Parliament. No judge of either of the said courts shall be capable of being elected to or of sitting in the House of Commons. Every person appointed after the passing of this act to be judge of either of the said courts (other than the Lord Chancellor), when he enters on the execution of his office, shall take, in the presence of the Lord Chancellor, the oath of allegiance, and judicial oath as defined by the Promissory Oaths Act, 1868. The oaths to be taken by the Lord Chancellor shall be the same as heretofore.

This section is substituted for sect. 9 of the Act of 1873, the only material difference being that the words "with the exception of the Lord Chancellor" did not occur in that section, and that the words "during good behaviour" take the place of "for life," the latter slight alteration being in keeping with the law as to tenure of judgeships as first settled by 12 & 13 Will. 3, c. 2, and afterwards by 1 Geo. 3, c. 23. The disqualification from sitting in the House of Commons existed by the common law of parliament. Before the present act, however, the Master of the Rolls was eligible.

*Oath of judge.*] For the ancient oath of the judges, see 20 Edw. 3, c. 1, repealed by 34 & 35 Vict. c. 48. By the Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72), the form of the oath of allegiance is: "I do swear that I will be faithful and bear true allegiance to her Majesty Queen Victoria, her heirs and successors, according to law. So help me God;" and the form of the judicial oath is: "I do swear that I will well and truly serve our sovereign lady Queen Victoria in the office of , and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill-will. So help me God." By sects. 5 and 6 of that act the oaths of allegiance and the judicial oath is to be taken by the Lord Chancellor, and *also* the official oath, which is: "I do swear that I will well and truly serve her Majesty Queen Victoria in the office of [Lord Chancellor]. So help me God." The Lord Chancellor, though usually, is not necessarily, a peer. (May's Parl. Pr. p. 225.) As to exclusion of Roman Catholic from the office, see 10 Geo. 4, c. 7, s. 12; and as to transfer of ecclesiastical patronage of Jewish Lord Chancellor to Archbishop of Canterbury, see 21 & 22 Vict. c. 49, s. 4.

Precedence of judges.

**6.** The Lord Chancellor shall be president of the Court of Appeal; the other ex officio judges of the Court of Appeal shall rank in the order of their present respective official precedence. The ordinary judges of the Court of Appeal, if not entitled to precedence as peers or privy councillors, shall rank according to the priority of their respective appointments as such judges.

The judges of the High Court of Justice who are not also judges of the Court of Appeal shall rank next after the judges of the Court of Appeal, and, among themselves (subject to the provisions in the principal act contained as to existing judges), according to the priority of their respective appointments.

With the exception of the direction as to the presidency of the Lord Chancellor (which was continued in the repealed sect. 6 of the principal act), this section is a substantial re-enactment of the repealed sect. 10 of the principal act for which it is substituted.

For the provisions of the principal act as to existing judges, see sect. 11 of that act, p. 5.

*Act of* 1875, *ss.* 6—8.

Lunacy jurisdiction of Lords Justices of Appeal in Chancery.

7. Any jurisdiction usually vested in the Lords Justices of Appeal in Chancery, or either of them, in relation to the persons and estates of idiots, lunatics, and persons of unsound mind, shall be exercised by such judge or judges of the High Court of Justice or Court of Appeal as may be intrusted by the sign manual of her Majesty or her successors with the care and commitment of the custody of such persons and estates; and all enactments referring to the Lords Justices as so intrusted shall be construed as if such judge or judges so intrusted had been named therein instead of such Lords Justices: Provided that each of the persons who may at the commencement of the principal act be Lords Justices of Appeal in Chancery shall, during such time as he continues to be a judge of the Court of Appeal, and is intrusted as aforesaid, retain the jurisdiction vested in him in relation to such persons and estates as aforesaid.

By sect. 17, sub-sect. 3, of the principal act (p. 90), the jurisdiction of the Lord Chancellor and Lords Justices in lunacy is expressly excepted from transfer to the High Court; and by sect. 18, sub-sect. 5 (p. 10), the appellate jurisdiction of the Privy Council in lunacy is transferred to the Court of Appeal. The original jurisdiction in lunacy of the Lord Chancellor, when intrusted by the sign manual with the care of lunatics, is unaffected by either the principal act or this act, and that of the existing Lords Justices is also unaffected so long as they continue so intrusted. (See 15 & 16 Vict. c. 87, s. 15; 16 & 17 Vict. c. 70, s. 2, and 30 & 31 Vict. c. 87, s. 13.) Such original jurisdiction can be exercised by the Chancery Division (*Vane* v. *Vane*, 2 Ch. D. 124, per Jessel, M. R.), but only to the extent of giving directions for maintenance; the Chancery Division has no jurisdiction to appoint a guardian of the person of a lunatic (*Bligh, In re*, (C. A.), 12 Ch. D. 364; 49 L. J., Ch. 56; 41 L. T. 570; 27 W. R. 876, overruling *Vane* v. *Vane, supra*, and *Bligh* v. *O'Connell*, 38 L. T. 217; 26 W. R. 311, *quâ* directions as to guardianship). See further, Ord. XIII. Rule 1, p. 146, *post*, and Order XVII. p. 160, *post*. The appellate jurisdiction in lunacy is, by sect. 18, sub-sect. 5, of the principal act, transferred to the Court of Appeal.

Judge of Admiralty Court.

Recital of sect. 11 of Act of 1875, as to existing judges.

8. Whereas by section eleven of the principal act it is provided as follows: "Every existing judge who is by this act made a judge of the High Court of Justice or an ordinary judge of the Court of Appeal shall, as to tenure of office, rank, title, salary, pension, patronage, and powers of appointment or dismissal, and all other privileges and disqualifications, remain in the same condition as if this act had not passed; and, subject to the change effected in their jurisdiction aan duties by or in pursuance of the provisions of this act, each of the said existing judges shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform in pursuance of any act of parliament, law, or custom if this act had not passed. No judge appointed before the passing of this act

*Act of* 1875, *s.* 8.

shall be required to act under any commission of assize, nisi prius, oyer and terminer, or gaol delivery, unless he was so liable by usage or custom at the commencement of this act:"

And whereas the judge of the High Court of Admiralty is by the principal act* appointed a judge of the High Court of Justice:

* Sect. 5, p. 3.

And whereas such judge is, as to salary and pension, inferior in position to the other puisne judges of the superior courts of common law, but holds certain ecclesiastical and other offices in addition to the office of judge of the High Court of Admiralty:

And whereas it is expedient that such judge, if he be willing to relinquish such other offices, should be placed in the same position as to rank, salary and pension, as the other puisne judges of the superior courts of common law:

Be it enacted that—

Special provision as to existing Admiralty judge.

If the existing judge of the High Court of Admiralty under his hand signifies to the Lord Chancellor in writing, before the commencement of the principal act, that he is willing to relinquish such other offices as aforesaid, and does before the commencement of the principal act resign all other offices of emolument held by him except the office of judge of the High Court of Admiralty, he shall, from and after the commencement of the principal act, be entitled to the same rank, salary, and pension as if he had been appointed a judge of the High Court of Justice immediately on the commencement of the principal act, with this addition, that, in reckoning service for the purposes of his pension, his service as a judge of the High Court of Admiralty shall be reckoned in the same manner as if the High Court of Justice had been established at the time of his accepting the office of judge of the High Court of Admiralty, and he had continued from such time to be a judge of the said High Court of Justice.

As to existing registrar in ecclesiastical and admiralty causes.

The present holder of the office of registrar of her Majesty in ecclesiastical and admiralty causes shall, as respects any appeals in which he would otherwise be concerned coming within the cognizance of the Court of Appeal, be deemed to be an officer attached to the Supreme Court; and the office, so far as respects the duties in relation to such appeals as aforesaid, shall be deemed to be a separate office within the meaning of section seventy-seven of the principal act, and may be dealt with accordingly. He shall be entitled, in so far as he sustains any loss of emoluments by or in consequence of the principal act or this act, to prefer a claim to the Treasury in the same manner as an officer paid out of fees whose emoluments are affected by the passing of the principal act is entitled to do under section eighty of the principal act.

Subject as aforesaid, the person who is at the time of the passing of this act registrar of her Majesty in ecclesiastical and admiralty causes shall, notwithstanding anything in the

principal act or this act, have the same rank and hold his office upon the same tenure and upon the same terms and conditions as heretofore; but it shall be lawful for her Majesty by order in council made upon the recommendation of the Lord Chancellor, with the concurrence of the Treasury, to make, notwithstanding anything contained in any act of parliament, such arrangements with respect to the duties of the said last-mentioned office, either by abolition thereof or otherwise, as to her Majesty may seem expedient: Provided that such order shall not take effect during the continuance in such office of the said person so being registrar at the time of the passing of the act, without his assent.

*Act of* 1875, *ss.* 8, 9.

Power to abolish office.

Every judge of the Probate, Divorce, and Admiralty Division of the said High Court of Justice appointed after the passing of this act shall, so far as the state of business in the said division will admit, share with the judges mentioned in section thirty-seven* of the principal act the duty of holding sittings for trials by jury in London and Middlesex, and sittings under commissions of assize, oyer and terminer, and gaol delivery.

Judge of Probate, &c. Division appointed after act, to sit at Nisi Prius.

* Page 36.

The "existing" Admiralty Judge, mentioned in the earlier paragraphs of this section (Sir Robert Phillimore), complied with the provisions of the section as to resignation of all other offices of emoluments, &c.

**9.** The London Court of Bankruptcy shall not be united or consolidated with the Supreme Court of Judicature, and the jurisdiction of that court shall not be transferred under the principal act to the High Court of Justice, but shall continue the same in all respects as if such transfer had not been made by the principal act, and the principal act shall be construed as if such union, consolidation and transfer had not been made: Provided that—

London Court of Bankruptcy not to be united with Supreme Court.

(1.) The office of Chief Judge in Bankruptcy shall be filled by such one of the judges of the High Court of Justice appointed since the passing of the Bankruptcy Act, 1869, or, with his consent, of such one of the judges appointed prior to the passing of the last-mentioned act, as may be appointed by the Lord Chancellor to that office; and

Chief Judge in Bankruptcy.

(2. The appeal from the London Court of Bankruptcy shall lie to the Court of Appeal in accordance with the principal act.

Appeal in Bankruptcy.

The London Court of Bankruptcy (for the constitution of which see Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), Part III.) was not among the courts recommended by the Judicature Commissioners to be consolidated with the Supreme Court. By sect. 65 of the Bankruptcy Act, 1869, the Chief Judge in Bankruptcy had conferred upon him all the "powers, jurisdiction and privileges" of a judge of a superior court, and by sect. 72 of the Bankruptcy Act, 1869 (as to which see *Harris* v. *Halliday*, L. R., 9 C. P. 668; 43 L. J., C. P. 350; 30 L. T. 680; 24 W. R. 75, and the cases there cited), no court having jurisdiction in

*Act of* 1875, *ss.* 9, 10.

bankruptcy "shall be subject to be restrained in the execution of its powers by the order of any other court." The Court of Bankruptcy may stay an action in the Supreme Court. (*Ex parte Ditton*, 1 Ch. D. 557, and p. 20, *ante*.)

Amendment of Act of 1873, s. 25.

**10.** Whereas, by section twenty-five of the principal act, after reciting that it is expedient to amend and declare the law to be thereafter administered in England as to the matters next thereinafter mentioned, certain enactments are made with respect to the law, and it is expedient to amend the said section: Be it therefore enacted as follows:—

* Page 20.

Sub-section one of clause twenty-five* of the principal act is hereby repealed, and instead thereof the following enactment shall take effect; (that is to say,) In the administration by the court of the assets of any person who may die after the commencement of this act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities and in the winding up of any company under the Companies Act, 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities proveable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, or under the winding-up of such company, and make such claims against the same as they may respectively be entitled to by virtue of this act.

Administration actions and winding up.

Rules of law of bankruptcy to prevail.

Stipulations not of essence.

† Page 21.

In sub-section seven† of the said section, the reference to the date of the passing of the principal act shall be deemed to refer to the date of the commencement of the principal act.

*Insolvent Estates.*] The substitution of this clause for the original clause of the Act of 1873 avoids some difficulties as to the application of the new rule to the estates of persons dying between the passing and the commencement of the act. The rule here provided does not apply to pending business under the Winding-up Acts, that is, where the order to wind up has been made before the commencement of the act. (*Phœnix Bessemer Steel Co., In re*, 45 L. J., Ch. 11; 33 L. T. 403; *Suche & Co., In re*, 1 Ch. D. 48; 45 L. J., Ch. 12; 33 L. T. 774.)

*Judgment Creditor—Executor's Retainer.*] The priority of a judgment creditor in an administration action is unaffected by this sub-section, (*Smith* v. *Morgan*, 5 C. P. D. 337); and so is the executor's right of retainer (*Lee* v. *Nuttall*, 12 Ch. D. 61); but a creditor whose debt bears interest is, by the effect of the sub-section, entitled to interest up to the date of judgment for administration only, and not to date of payment. (*Summers, In re*, 13 Ch. D. 136.)

The three points on which the law for the administration of the estate of a deceased insolvent is assimilated to the law of bankruptcy are:

(1) the rights of secured and unsecured creditors; (2) the proveability of debts and liabilities; and (3) the valuation of annuities and contingent liabilities. Only these points and no other points are comprehended by the sub-section, which does not apply section 87 of the Bankruptcy Act, by which an execution creditor for more than 50*l.* loses the benefit of his execution if the sheriff has notice of bankruptcy in fourteen days (*Withernsea Brickworks, &c., In re* (C. A.), 50 L. J., Ch. 185; 43 L. T. 713; 29 W. R. 178, affirming decision below, and *Railway Plant, &c. Co.*, 8 Ch. D. 183; and *Richards & Co., In re*, 11 Ch. D. 676; and overruling *Printing, &c. Co., In re*, 8 Ch. D. 535); nor the reputed ownership rule (*Crumlin Viaduct Works Co.*, 11 Ch. D. 755; *Stockton Iron Furnace Co., In re*, 10 Ch. D. 335, *contra*, being apparently overruled by the *Withernsea case*); nor sect. 32, giving local rates due from the bankrupt priority over other debts (*Re Albion, &c. Co.*, 7 Ch. D. 547; 47 L. J., Ch. 229; 38 L. T. 207; 26 W. R. 348). *Association of Land Financiers, In re*, 50 L. J., Ch. 201; 43 L. T. 753; 29 W. R. 277, in which it was held that sect. 32 was applied in respect of clerks' salaries, would seem to be inconsistent with the *Withernsea case, supra*, and the similar decision in *Norton Iron Works, In re*, 26 W. R. 53, would seem to be overruled thereby. *Act of* 1875, *ss.* 10, 11.

Nor does the sub-section give a contributory a right to set off a judgment debt obtained against a company before the winding-up order against calls by the liquidator (*General Works Co., In re*, 12 Ch. D. 755; 48 L. J., Ch. 774; 41 L. T. 21; 27 W. R. 934); nor give the landlord of property, of which a liquidating company are tenants, a right to distrain for rent due before the winding-up order (*Coal Consumers Association, In re*, 4 Ch. D. 625; 46 L. J., Ch. 501; 35 L. T. 729; 25 W. R. 300; *Bridgwater Engineering Co., In re*, 12 Ch. D. 181); nor comprise among the liabilities proveable obligations (without breach) under the covenants of a lease to pay rent, and not to assign without leave. (*Westbourne Grove Drapery Co., In re*, 5 Ch. D. 248; 46 L. J., Ch. 525; 36 L. T. 439; 25 W. R. 409.)

See also *Moor* v. *Anglo-Italian Bank*, 10 Ch. D. 681; *Re West of England Bank*, 12 Ch. D. 823; and *Stanhope Silkstone Collieries Co., In re* (C. A.), 11 Ch. D. 160, in which latter case a creditor who had obtained a garnishee order *nisi* was held not to be a secured creditor.

The bankruptcy rule on the first point will be found in sect. 40, and that on the other two points in sect. 31 of the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71). The most important effect of the new rule is that the secured creditor is not, as heretofore, entitled to the full benefit of his security, and also, if his security be insufficient, to receive a dividend on his whole debt, or so much of the amount of such dividend as, together with the value of his security, makes up his whole debt (*Mason* v. *Bogg*, 2 My. & Cr. 443),—but, if his security be insufficient, he will be entitled to a dividend in respect of the deficiency only. The Court of Bankruptcy was originally made part of the Supreme Court by sect. 3 of the Act of 1873, but is continued as a distinct court by sect. 9 of the Act of 1875.

**11.** Subject to any rules of court and to the provisions of the principal act and this act and to the power of transfer, every person by whom any cause or matter may be commenced in the said High Court of Justice shall assign such cause or matter to one of the divisions of the said High Court as he may think fit, by marking the document by which the same is commenced with the name of such division, and giving notice thereof to the proper officer of the court: Provided that— Choice of division by plaintiff.

(1.) All interlocutory and other steps and proceedings in or before the said High Court in any cause or matter subsequent to the commencement thereof, shall be Interlocutory proceedings.

*Act of* 1875, *ss.* 11, 12.

taken (subject to any rules of court and to the power of transfer) in the division of the said High Court to which such cause or matter is for the time being attached; and,

Transfer, in case of assignment of cause to wrong division.

(2.) If any plaintiff or petitioner shall at any time assign his cause or matter to any division of the said High Court to which, according to the rules of court or the provisions of the principal act or this act, the same ought not to be assigned, the court, or any judge of such division, upon being informed thereof, may, on a summary application at any stage of the cause or matter, direct the same to be transferred to the division of the said court to which, according to such rules or provisions, the same ought to have been assigned, or he may, if he think it expedient so to do, retain the same in the division in which the same was commenced; and all steps and proceedings whatsoever taken by the plaintiff or petitioner or by any other party in any such cause or matter, and all orders made therein by the court or any judge thereof before any such transfer shall be valid and effectual to all intents and purposes in the same manner as if the same respectively had been taken and made in the proper division of the said court to which such cause or matter ought to have been assigned; and

Validity of all steps prior to transfer.

Probate, &c. Division.

(3.) Subject to rules of court, a person commencing any cause or matter shall not assign the same to the Probate, Divorce, and Admiralty Division unless he would have been entitled to commence the same in the Court of Probate, or in the Court for Divorce and Matrimonial Causes, or in the High Court of Admiralty if this act had not passed.

This section, with the exception of the third proviso as to the Probate, Divorce, and Admiralty Division, is substantially a re-enactment of the repealed section 35 of the principal act for which it is substituted. See further, sect. 34 of the Act of 1873, p. 33, *ante*, and Ord. V., Rule 4, p. 130, *post*.

As to transfer by a judge at chambers, in case of an assignment to a wrong division, see *Hillman* v. *Mayhew*, 1 Ex. D. 132.

Quorum of Court of Appeal.

**12.** Every appeal to the Court of Appeal shall, where the subject matter of the appeal is a final order, decree, or judgment, be heard before not less than three judges of the said court sitting together, and shall, when the subject-matter of the appeal is an interlocutory order, decree, or judgment, be heard before not less than two judges of the said court sitting together.

Any doubt which may arise as to what decrees, orders, or judgments are final, and what are interlocutory, shall be determined by the Court of Appeal.

Subject to the provisions contained in this section the Court of Appeal may sit in two divisions at the same time.

Divisions of Court of Appeal.

This section differs from sect. 53 of the principal act for which it is substituted in the distinction drawn between final and interlocutory judgments. The quorum of the Court of Appeal in Chancery was, by 14 & 15 Vict. c. 83, s. 11, one of the Lords Justices sitting with the Lord Chancellor, or both Lords Justices sitting apart from the Lord Chancellor, or the Lord Chancellor sitting alone.

For the Exchequer Chamber, the Court of Appeal at law, no quorum was fixed, the enactment (11 Geo. 4 & 1 Will. 4, c. 70, s. 8) which regulated that court merely speaking of "the judges or judges and barons of the two courts" other than the court from which the appeal was brought. In practice, the Exchequer Chamber was composed of never less than five judges, which was the usual number. On the other hand, the Court of Appeal in Chancery was generally composed of two, and never more than three, judges.

Both before and after the Act of 1876, the Court of Appeal has usually sat contemporaneously in two divisions, each division being composed of from three to five judges. By sect. 16 of the Act of 1876 (p. 101), the Court of Appeal may make special orders regulating its own sittings.

Joint district registrars.

**13.** Whereas by section sixty* of the principal act it is provided that for the purpose of facilitating the prosecution in country districts of legal proceedings, it shall be lawful for her Majesty by order in council from time to time to direct that there shall be district registrars in such places as shall be in such order mentioned for districts to be thereby defined: and whereas it is expedient to amend the said section: Be it therefore enacted that—

* Page 48.

Where any such order has been made, two persons may, if required, be appointed to perform the duties of district registrar in any district named in the order, and such persons shall be deemed to be joint district registrars, and shall perform the said duties in such manner as may from time to time be directed by the said order, or any order in council amending the same.

Registrar of inferior court of record may be district registrar.

Moreover the registrar of any inferior court of record having jurisdiction in any part of any district defined by such order (other than a county court) shall, if appointed by her Majesty, be qualified to be a district registrar for the said district, or for any and such part thereof as may be directed by such order or any order amending the same.

Every district registrar shall be deemed to be an officer of the Supreme Court, and be subject accordingly to the jurisdiction of such court, and of the divisions thereof.

See "Orders in Council II." (p. 428), by which two joint registrars are appointed for Liverpool.

† Page 59.

**14.** Whereas under section eighty-seven† of the principal act, solicitors and attorneys will after the commencement of that act be called solicitors of the Supreme Court: Be it therefore enacted that—

*Act of* 1875, *ss.* 14—16.

Regulations as to solicitors.

The registrar of attorneys and solicitors in England shall be called the registrar of solicitors, and the Lord Chief Justice of England, the Master of the Rolls, *the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron* (*a*), or any two of them, may, from time to time, by regulation adapt any enactments relating to attorneys and any declaration, certificate, or form required under those enactments, to the solicitors of the Supreme Court under section eighty-seven† of the principal act.

† Page 59.

See Regulations under this section as to examination and admission of intending solicitors, in the 2nd edition of this work, pp. 430—447; but by the Solicitors Act, 1877 (40 & 41 Vict. c. 25), the power of making regulations for the conduct of these examinations became vested in the Incorporated Law Society, and the regulations of the judges under this section (except as to re-admission, custody of documents, and notices already given) were abrogated.

Power to apply County Court Appeal acts to inferior courts generally.

**15.** It shall be lawful for her Majesty from time to time, by order in council, to direct that the enactments relating to appeals from county courts shall apply to any other inferior court of record; and those enactments, subject to any exceptions, conditions, and limitations contained in the order, shall apply accordingly, as from the date mentioned in the order.

The enactments relating to appeals from county courts are 13 & 14 Vict. c. 61, s. 14; 19 & 20 Vict. c. 108, s. 68; 28 & 29 Vict. c. 99, s. 18 (equity); 30 & 31 Vict. c. 142, s. 13; and the County Court Act, 1875 (38 & 39 Vict. c. 50). Among the inferior courts of record, with civil jurisdiction, not being county courts, are the Mayor's Court of London, the Court of Passage at Liverpool, the Court of Requests at Salford, the Tolzey Court of Bristol, and the Provost Court of Exeter.

No order in council has as yet (February, 1881) been made under this section.

RULES OF COURT.

‡ Page 122.

**16.** The rules of court in the first schedule‡ to this act shall come into operation at the commencement of this act, and as to all matters to which they extend shall thenceforth regulate the proceedings in the High Court of Justice and Court of Appeal. But such rules of court, and also all such other rules of court (if any) as may be made after the passing and before the commencement of this act under the authority of the next section, may be annulled or altered by the authority by which new rules of court may be made after the commencement of this act.

The repealed schedule to the principal act contained fifty-eight rules, and the scheme of that act was that such rules should not be altered by the judges until after the commencement of it, but should be amplified by a body of subsidiary rules to be made by the judges after the passing and before the commencement of it. A body of subsidiary rules was accordingly prepared, and the rules in the first schedule to the present act are made up of a consolidation of such subsidiary rules with the fifty-eight rules of the repealed schedule to the principal act.

(*a*) Impliedly repealed. See sect. 32 of Act of 1873, and note, *ante*, p. 32.

By sect. 17 of the Act of 1876, rules of court are to be made and altered by any three or more of a committee of nine judges.

*Act of* 1875, *ss.* 16, 17.

**17** Her Majesty may at any time after the passing and before the commencement of this act, by order in council, made upon the recommendation of the Lord Chancellor, and the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and the Lords Justices of Appeal in Chancery, or any five of them, and the other judges of the several courts intended to be united and consolidated by the principal act as amended by this act, or of a majority of such other judges, make any further or additional rules of court for carrying the principal act and this act into effect, and in particular for all or any of the following matters, so far as they are not provided for by the rules in the first schedule to this act; that is to say,

Power to make further Rules of Court.

(1.) For regulating the sittings of the High Court of Justice and the Court of Appeal, and of any divisional or other courts thereof respectively, and of the judges of the said High Court sitting in chambers; and,

Sittings.

(2.) For regulating the pleading, practice, and procedure in the High Court of Justice and Court of Appeal; and,

Pleading, &c.

(3.) Generally, for regulating any matters relating to the practice and procedure of the said courts respectively, or to the duties of the officers thereof, or of the Supreme Court, or to the costs of proceedings therein.

Generally.

Costs.

From and after the commencement of this act, the Supreme Court may at any time, with the concurrence of a majority of the judges thereof present at any meeting for that purpose held (of which majority the Lord Chancellor shall be one), alter and annul any rules of court for the time being in force, and have and exercise the same power of making rules of court as is by this section vested in her Majesty in council on the recommendation of the said judges before the commencement of this act.

Power to alter Rules of Court.

*See now Act of* 1876, *s.* 17.

All rules of court made in pursuance of this section shall be laid before each house of parliament within such time and shall be subject to be annulled in such manner as is in this act provided.*

Submission of rules to parliament.

* Sect. 25.

All rules of court made in pursuance of this section, if made before the commencement of this act, shall from and after the commencement of this act, and if made after the commencement of this act shall from and after they come into operation, regulate all matters to which they extend, until annulled or altered in pursuance of this section.

The reference to certain judges in section twenty-seven* of

* Page 27.

*Act of* 1875, *ss.* 17—19.

the principal act shall be deemed to refer to the judges mentioned in this section as the judges on whose recommendation an order in council may be made.

For "Additional Rules," cited as "Rules of the Supreme Court (Costs)," see "Orders in Council I.," *post*.

By sect. 17 of the Act of 1876 (p. 102, *post*) all rules of court, whether made under that act or the present act, are to be made by any three or more of the following judges:—The Lord Chancellor (who is always to be one), the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and four other judges of the Supreme Court. And by sect 16 of the same act (p. 101, *post*) the sittings of the Court of Appeal are to be regulated by rules made by the president of that court and three of its judges.

There is no direction as to printing or publishing the Rules of Court in the Gazette or elsewhere, and the direction as to laying them before the Houses of Parliament would be satisfied by laying a copy in manuscript before the Houses. In practice, the rules are printed and published by the stationery office.

Rules of Probate, Divorce and Admiralty Courts to remain in force.

**18.** All rules and orders of court in force at the time of the commencement of this act in the Court of Probate, the Court for Divorce and Matrimonial Causes, and the Admiralty Court, or in relation to appeals from the Chief Judge in Bankruptcy, or from the Court of Appeal in Chancery in bankruptcy matters, except so far as they are expressly varied by the first schedule hereto or by rules of court made by order in council before the commencement of this act, shall remain and be in force in the High Court of Justice and in the Court of Appeal respectively until they shall respectively be altered or annulled by any rules of court made after the commencement of this act.

Jurisdiction of president of Probate, &c. Division to make rules as to non-contentious probate business.

The present judge of the Probate Court and of the Court for Divorce and Matrimonial Causes shall retain, and the president for the time being of the Probate and Divorce Division of the High Court of Justice shall have, with regard to non-contentious or common form business in the Probate Court, the powers now conferred on the judge of the Probate Court by the thirtieth section of the twentieth and twenty-first years of Victoria, chapter seventy-seven, and the said judge shall retain, and the said president shall have, the powers as to the making of rules and regulations conferred by the fifty-third section of the twentieth and twenty-first years of Victoria, chapter eighty-five.

Ord. XIII., Rule 10 (p. 149, *post*), as to proceedings *in rem* by default having been annulled by R. S. C., December, 1875, the effect of the annulment and the present section combined is to revive the Admiralty Rules of 1871, as to proceedings *in rem* by default. (*The Polymede*, 1 P. D. 121; 34 L. T. 367.)

By virtue of this section, a defendant to an admiralty action may still appear under protest. (*The Vivar* (C. A.), 25 W. R. 453.)

Criminal procedure, unaffected.

**19.** Subject to the first schedule hereto and any rules of court to be made under this act, the practice and procedure in

all criminal causes and matters whatsoever in the High Court of Justice and in the Court of Appeal respectively, including the practice and procedure with respect to crown cases reserved, shall be the same as the practice and procedure in similar causes and matters before the commencement of this act.

This section is substantially a re-enactment of the repealed section (sect. 71) of the Act of 1873, for which it is substituted, the reason for a fresh enactment being that the rules of the repealed schedule of the Act of 1873, and the judges' rules under that act, are now thrown into one by the schedule to the present act, and that the power to make new rules is also given by the present act. (For the jurisdiction in crown cases reserved under 11 & 12 Vict. c. 78, now exerciseable by the High Court of Justice, see sect. 47 of the Act of 1873, and note, p. 42.)

Neither act nor rules of court to affect rules of evidence or juries.

**20.** Nothing in this act or in the first schedule hereto, or in any rules of court to be made under this act, save as far as relates to the power of the court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to jurymen or juries.

A substantial re-enactment of the repealed section 72 of the Act of 1873. (See note to preceding section.) The rule in the schedule allowing depositions to be used as evidence is Ord. XXXVII., Rule 4. The law of juries is chiefly regulated by 6 Geo. 4, c. 50; by 25 & 26 Vict. c. 107; and 33 & 34 Vict. c. 77. (See "Additional Acts," *post*, No. III., p. 513.)

Maintenance of old procedure.

**21.** Save as by the principal act or this act, or by any rules of court, may be otherwise provided, all forms and methods of procedure which at the commencement of this act were in force in any of the courts whose jurisdiction is by the principal act or this act transferred to the said High Court and to the said Court of Appeal respectively, under or by virtue of any law, custom, general order, or rules whatsoever, and which are not inconsistent with the principal act or this act or with any rules of court, may continue to be used and practised in the said High Court of Justice and the said Court of Appeal respectively, in such and the like cases, and for such and the like purposes, as those to which they would have been applicable in the respective courts of which the jurisdiction is so transferred, if the principal act and this act had not passed.

This section is substantially a re-enactment of the repealed section 73 of the Act of 1873. (See note to sect. 19 of this act.) Where conflicting practices are discovered, upon which no positive rule has been laid down by these acts, or where no guide is provided but the spirit and general intention of the acts, it should be observed that this section does not keep alive the old practice in the divisions corresponding to the former courts, but adopts all the old practice promiscuously for the whole Supreme Court, and directs them to be used "in such and the like cases and for such and the like purposes," as before, and it has been laid down by the Court of Appeal that that practice is to prevail which is considered most

*Act of* 1875, *ss.* 21—23.

convenient (*Newbiggin-by-the-Sea Gas Co.* v. *Armstrong* (C. A.), 13 Ch. D. 310; 49 L. J., Ch. 231; 41 L. T. 637; 28 W. R. 217; see also *Nurse* v. *Durnford*, 13 Ch. D. 764; 41 L. T. 611: in these cases the common law practice, in an action brought by a solicitor without authority, that the defendant should be served with notice of application to dismiss the action, and the solicitor should pay the costs of both parties, was followed in preference to the equity practice, by which the defendant was not served with notice of the application, and could recover costs from the nominal plaintiff.) In *Le Grange* v. *M'Andrew*, 4 Q. B. D. 210, the equity practice, that a judge has discretion to dismiss an action for want of prosecution, though the defendant has not abandoned an order for security for costs, was preferred to the common law practice. See sect. 25, sub-sect. 11 of the Act of 1873, and note, p. 26. If plaintiff and defendant should happen to hit upon different practices, with reference to the like case or purpose, the practice intended to be followed would seem to be for the party aggrieved to apply to have his opponent's proceeding struck out.

Saving for right to have issues left to jury.

* Page 42.

**22.** Whereas by section forty-six* of the principal act it is enacted that "any judge of the said High Court sitting in the exercise of its jurisdiction elsewhere than in a divisional court may reserve any case, or any point in a case, for the consideration of a divisional court, or may direct any case or point in a case to be argued before a divisional court:" Be it hereby enacted, that nothing in the said act, nor in any rule or order made under the powers thereof or of this act, shall take away or prejudice the right of any party to any action to have the issues for trial by jury submitted and left by the judge to the jury before whom the same shall come for trial, with a proper and complete direction to the jury upon the law, and as to the evidence applicable to such issues:

Enforcement of right.

Provided also, that the said right may be enforced either by motion in the High Court of Justice or by motion in the Court of Appeal founded upon an exception entered upon or annexed to the record.

This section, which was inserted in Committee in the House of Commons, seems intended to preserve a right which the abolition of the bill of exceptions by Ord. LVIII., Rule 1 (p. 256), was supposed to imperil. (For the statutory law of Bill of Exceptions, see 13 Edw. 1, st. 1, c. 31; 3 & 4 Vict. c. 65, s. 15.)

Power to regulate circuits by order in council.

See p. 432.

**23.** Her Majesty may at any time after the passing of this act, and from time to time, by order in council, provide in such manner and subject to such regulations as to her Majesty may seem meet, for all or any of the following matters:

1. For the discontinuance, either temporarily or permanently, wholly or partially, of any existing circuit, and the formation of any new circuit by the union of any counties or parts of counties, or partly in one way and partly in the other, or by the constitution of any county or part of a county to be a circuit by itself; and in particular for the issue of commissions for the discharge of civil and criminal business in the county of Surrey to the judges appointed to sit for the trial by

jury of causes and issues in Middlesex or London or any of them; and, *Act of* 1875, *s.* 23.

2. For the appointment of the place or places at which assizes are to be holden on any circuit; and, Power to regulate circuits by Order in Council—(*continued*). Place of assizes.

3. For altering by such authority and in such manner as may be specified in the order, the day appointed for holding the assizes at any place on any circuit in any case, where, by reason of the pressure of business or other unforeseen cause, it is expedient to alter the same; and, Day of assizes.

4. For the regulation, so far as may be necessary for carrying into effect any order under this section, of the venue in all cases, civil and criminal, triable on any circuit or elsewhere. Venue.

Her Majesty may from time to time, by order in council, alter, add to, or amend any order in council made in pursuance of this section; and in making any order under this section may give any directions which it appears to her Majesty to be desirable to give for the purpose of giving full effect to such order. Alteration of Order in Council.

Provided that every order in council made under this section shall be laid before each house of parliament within such time, and shall be subject to be annulled in such manner as is in this act * provided. Submission of order to parliament. * Sect. 25.

Any order in council purporting to be made in pursuance of this section shall have the same effect in all respects as if it were enacted in this act. Order to have force of act.

The power hereby given to her Majesty shall be deemed to be in addition to and not in derogation of any power already vested in her Majesty in respect of the matters aforesaid; and all enactments in relation to circuits, or the places at which assizes are to be holden, or otherwise in relation to the subject-matter of any order under this section, shall, so far as such enactments are inconsistent with such order, be repealed thereby, whether such repeal is thereby expressly made or not; but all enactments relating to the power of her Majesty to alter the circuits of the judges, or places at which assizes are to be holden, or the distribution of revising barristers among the circuits, or otherwise enabling or facilitating the carrying the objects of this section into effect, and in force at the time of the passing of the principal act, shall continue in force, and shall, with the necessary variations, if any, apply, so far as they are applicable, to any alterations in or dealings with circuits, or places at which assizes are to be holden, made or to be made after the passing of this act, or to any other provisions of any order made under this section; and if any such order is made for the issue of commissions for the discharge of civil and criminal business in the county of Surrey as before mentioned in this section, that county shall for the purpose of the application of the said enactments be deemed Saving for former enactments as to circuits. County of Surrey to be deemed a circuit.

*Act of* 1875, *s.* 23.

to be a circuit, and the senior judge for the time being so commissioned, or such other judge as may be for the time being designated for that purpose by order in council, shall, in the month of July or August in every year, appoint the revising barristers for that county and the cities and boroughs therein.

Revising barristers.

The expression "assizes" shall in this section be construed to include sessions under any commission of oyer and terminer, or gaol delivery, or any commission in lieu thereof issued under the principal act.

*Former Enactments as to Circuits.*] The power given to the crown by this section is expressed to be "in addition to any power already vested in the crown." Previous powers of a similar but not so definite a character had been given by 3 & 4 Will. 4, c. 71, and 26 & 27 Vict. c. 122. By 3 & 4 Will. 4, c. 71 (which recites 6 Rich. 2, c. 5, and 11 Rich. 2, c. 11, from the latter of which recited acts it appears that the holding of assizes in county towns was considered "in part prejudicial and grievous to the people of England"), it is provided that an order in council might direct at what place assizes should be held, and that assizes might be held at more than one place in the same county on the same circuit, in which case counties might (sect. 3) be divided for the purpose of holding assizes in different divisions of the same county. By 26 & 27 Vict. c. 122, it is provided that any circuit may be altered by taking away county and annexing the same to any other circuit. By sect. 2 the powers of 3 & 4 Will. 4, c. 71, s. 3, are extended to the act, and by sect. 4 power is given to increase or diminish the numbers of revising barristers within circuits affected by the alterations, provided that the "present total number of revising barristers shall not be augmented otherwise than in accordance with" 6 & 7 Vict. c. 18, s. 29.

*Power of Queen in Council over Circuits.*] The present section goes far beyond the two former statutes, in so far as it gives power to discontinue circuits and to deprive altogether any county of the privilege of having the assizes held at some town or other place within it. The Queen in council has now full power over circuits, counties and assize towns, so that any circuit may be suppressed, any area added to or taken from a circuit, any district whatever appointed to have an assize town for its centre, and any assize town deprived of its privileges. In aid of these sweeping powers, sub-sect. 4 allows the venue to be regulated in order that causes proposed to be tried in a particular county, or indictments having a particular venue may be by the order appointed to be tried in any newly-constituted district, and by a jury from that district, instead of the particular county.

The Judicature Commissioners made the following recommendations on this subject:—

*Recommendation of Judicature Commission as to Circuits.*] "The necessity for holding assizes in every county, without regard to the extent of the business to be transacted in each county, leads, in our judgment, to a great waste of judicial strength and a great waste of time in going from one circuit town to another, and causes much inconvenience to those whose attendance is necessary or customary at the assizes. The distribution of a small amount of business among a large number of circuit towns is the cause of serious evil to the suitors. From the impossibility of ascertaining beforehand with accuracy the business likely to arise, the time allotted to some towns often proves insufficient, and complaints arise that the trial of causes is hurried. We are therefore of opinion that the judicial business of the country should no longer be arranged and distributed according to the accidental division of counties, but that the venue for trials should be enlarged, and that several counties should be

consolidated into districts of a convenient size, that such districts should for all purposes of trial at the assizes, both in civil and criminal cases, be treated as one venue or county, and that all counties of towns or cities should, for the purposes of such districts, be included in an adjacent district or county.

"In arranging the circuits, we think that they should be so remodelled as to render the amount of business likely to be transacted on each circuit as nearly equal as may be practicable; and in fixing the towns at which the assizes should be held, we recommend that those towns should be chosen which are the most central, with which there is the best and most rapid communication from all parts of the district, and to which the inhabitants are most in the habit of resorting for the purposes of business." (1st Report, p. 17.) The commission also recommended the abolition of "Commission Day," and the including of all the judges of the common law divisions in the commission for each circuit, so that they might be "auxiliary to each other as far as might be necessary."

*Order in Council.*] By an order in council, dated February 5th, 1876 (see p. 432, *post*), the existing circuits were discontinued, and new circuits created, but the places for holding assizes were not altered. By the Winter Assize Act, 1876 (39 & 40 Vict. c. 57, *post*, p. 542), orders in council may provide for the uniting of counties and the appointment of places for holding assizes for the united counties, where it appears that by reason of the small number of prisoners or otherwise it is usually inexpedient to hold separate winter assizes for any county. See also the Winter Assize Act, 1877, and the Spring Assize Act, 1879, *post*, p. 544.

Power to adapt certain statutory provisions to new procedure.

**24.** Where any provisions in respect of the practice or procedure of any courts the jurisdiction of which is transferred by the principal act or this act to the High Court of Justice or the Court of Appeal, are contained in any act of parliament, rules of court may be made for modifying such provisions to any extent that may be deemed necessary for adapting the same to the High Court of Justice and the Court of Appeal, without prejudice nevertheless to any power of the Lord Chancellor, with the concurrence of the Treasury, to make any rules with respect to the Paymaster-General, or otherwise.

Any provisions relating to the payment, transfer or deposit into, or in, or out of any court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to practice and procedure.

The Lord Chancellor, with the concurrence of the Treasury, may from time to time, by order, determine to what accounts and how intituled any such money or property as last aforesaid, whether paid, transferred, or deposited before or after the commencement of this act, is to be carried, and modify all or any forms relating to such accounts; and the governor and company of the Bank of England, and all other companies, bodies corporate, and persons, shall make such entries and alterations in their books as may be directed by the Lord Chancellor, with the concurrence of the Treasury, for the purpose of carrying into effect any such order.

*Act of* 1875, *ss.* 25, 26.

Orders in Council and Rules of Court to be laid before parliament and annulled on address from either house.

**25.** Every order in council and rule of court required by this act to be laid before each house of parliament shall be so laid within forty days next after it is made, if parliament is then sitting, or if not, within forty days after the commencement of the then next ensuing session; and if an address is presented to her Majesty by either house of parliament, within the next subsequent forty days on which the said house shall have sat, praying that any such rule or order may be annulled, her Majesty may thereupon by order in council annul the same; and the rule or order so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

This section shall come into operation immediately on the passing of this act.

This section follows the scheme of the Chancery Procedure Acts, that rules of court should come into force as soon as made, subject to the power of parliament to annul them afterwards. (See, for example, Chancery Amendment Act, 1858, sect. 12, and 23 & 24 Vict. c. 128, s. 2.) The scheme of Common Law Procedure Acts was that the operation of new rules of court should be suspended until parliament had approved them. (See, for example, 13 & 14 Vict. c. 16 (Common Law Procedure Act, 1852), s. 223.) Both courts, however, had, independently of statute, a power to regulate their own procedure. This power, of course, survives to the Supreme Court.

Fixing and collection of fees in High Court and Court of Appeal.

* Page 443.

**26.** The Lord Chancellor, with the advice and consent of the judges of the Supreme Court or any three of them, and with the concurrence of the Treasury, may, either before or after the commencement of this act, by order,* fix the fees and per-centages (including the per-centage on estates of lunatics) to be taken in the High Court of Justice or in the Court of Appeal, or in any court created by any commission, or in any office which is connected with any of those courts, or in which any business connected with any of those courts is conducted, or by any officer paid wholly or partly out of public moneys who is attached to any of those courts or the Supreme Court, or any judge of those courts, including the masters and other officers in lunacy, and may from time to time by order

Lunacy fees.

increase, reduce or abolish all or any of such fees and per-centages, and appoint new fees and per-centages to be taken in the said courts or offices or any of them, or by any such officer as aforesaid.

Any order made in pursuance of this section shall be binding on all the courts, offices, and officers to which it refers, in the same manner as if it had been enacted by parliament.

Fees payable to exchequer.

All such fees and per-centages shall (save as otherwise directed by the order) be paid into the receipt of her Majesty's exchequer and be carried to the consolidated fund, and with respect thereto the following rules shall be observed:

Fees to be taken by stamps.

(1.) The fees and per-centages shall, except so far as the

order may otherwise direct, be taken by stamps, and if not taken by stamps shall be taken, applied, accounted for, and paid over in such manner as may be directed by the order.

(2.) Such stamps shall be impressed or adhesive, as the Treasury from time to time direct.

Treasury rules.

(3.) The Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules† as may seem fit for publishing the amount of the fees and regulating the use of such stamps, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for insuring the proper cancellation of stamps and for keeping accounts of such stamps.

† Pages 456, 458.

Unstamped document not to be received in evidence.

(4.) Any document which ought to bear a stamp in pursuance of this act, or any rule or order made thereunder, shall not be received, filed, used, or admitted in evidence unless and until it is properly stamped, within the time prescribed by the rules under this section regulating the use of stamps, but if any such document is through mistake or inadvertence received, filed, or used without being properly stamped, the Lord Chancellor or the court may, if he or it shall think fit, order that the same be stamped as in such order may be directed.

Inland revenue account.

(5.) The Commissioners of Inland Revenue shall keep such separate accounts of all money received in respect of stamps under this act, as the Treasury may from time to time direct, and, subject to the deduction of any expenses incurred by those commissioners in the execution of this section, the money so received shall, under the direction of the Treasury, be carried to and form part of the consolidated fund.

Forgery of stamps.

(6.) Any person who forges or counterfeits any such stamp, or uses any such stamp, knowing the same to be forged or counterfeit, or to have been previously cancelled or used, shall be guilty of forgery, and be liable on conviction to penal servitude for a term not exceeding seven years, or to imprisonment with or without hard labour for a term not exceeding two years.

Power to abolish existing fees.

An order under this section may abolish any existing fees and per-centages which may be taken in the said courts or offices, or any of them, or by the said officers or any of them, but, subject to the provisions of any order made in pursuance of this section, the existing fees and per-centages shall continue to be taken, applied, and accounted for in the existing manner.

The provisions of this section are taken from the Common Law Courts (Fees) Act, 1865 (28 Vict. c. 45), and the Courts of Justice (Salaries and

*Act of* 1875, *s.* 27.

Funds) Act, 1869, sects. 19—23, and are substantially identical therewith. (For orders under this section, see pp. 456, 458, *post*.)

Provisions as to Lancaster Fee Fund and salaries, &c. of officers of courts at Lancaster and Durham.

27. Whereas by the Common Pleas at Lancaster Amendment Act, 1869, the fees taken by the prothonotaries and district prothonotaries in pursuance of that act, are directed to be carried to the credit of "the prothonotaries fee fund account of the county palatine of Lancaster," and certain salaries and expenses connected with the offices of the said prothonotaries and district prothonotaries, are directed to be paid out of that account:

And whereas, on the twenty-fourth day of June, one thousand eight hundred and seventy-four, there was standing to the credit of that account a sum of ten thousand seven hundred and fifty-five pounds consolidated three pounds per centum bank annuities and one thousand eight hundred and ten pounds cash, or thereabouts:

And whereas the fees received in the Court of Pleas of Durham are applied in payment of disbursements connected with the office of the prothonotary of that court, and any surplus of such fees is paid into the receipt of her Majesty's exchequer, and any deficiency of the amount of the said fees to pay such disbursements is charged on the consolidated fund of the United Kingdom:

And whereas after the commencement of the principal act, the jurisdiction of the Court of Common Pleas at Lancaster and the Court of Pleas at Durham is by that act transferred to and vested in the High Court of Justice,* and it is expedient to make further provision respecting the expenses of those courts and the said stock and cash standing to the credit of the prothonotaries fee fund account of the county palatine of Lancaster:

* Page 8.

Be it therefore enacted that,—

Salaries of prothonotaries of Courts of Common Pleas at Lancaster and Durham.

After the commencement of the principal act there shall be paid out of moneys provided by parliament such sums by way of salary or remuneration to the prothonotaries and district prothonotaries of the Court of Common Pleas at Lancaster and the Court of Common Pleas at Durham and their clerks, and such sums for rent, taxes, and other outgoings at their offices, as the Lord Chancellor, with the concurrence of the Treasury, may from time to time direct.

As soon as each prothonotary and district prothonotary of the Court of Common Pleas at Lancaster has accounted for and paid all fees and moneys which he shall have received by virtue of his said office, the Chancellor of the Duchy of Lancaster shall cause any security given by such officer in pursuance of section seventeen of the Common Pleas at Lancaster Amendment Act, 1869, to be cancelled, and delivered up, or otherwise discharged.

Transfer of prothonotaries

As soon as may be after the commencement of the principal

act the Treasury and the Chancellor of the duchy and county palatine of Lancaster shall ascertain the amount of stock and cash standing to the credit of the prothonotaries fee fund account of the county palatine of Lancaster, after paying thereout to the receiver general of the revenues of the Duchy of Lancaster the amount of the fees remaining in the prothonotary's hands on the twenty-fourth day of October, one thousand eight hundred and sixty-nine, and paid to that account in pursuance of section seventeen of the last-mentioned act, and all other sums justly due to her Majesty in right of her said duchy and county palatine; and the Treasury shall by warrant direct the governor and company of the Bank of England to transfer to the Commissioners for the Reduction of the National Debt the amount of stock and cash so ascertained, and either to cancel the stock in their books or otherwise dispose of the same as may be directed by the warrant; and the governor and company of the Bank of England shall transfer the stock and cash, and cancel or otherwise dispose of the stock according to the warrant, without any order from the Lord Chancellor or the chancellor of the said duchy and county palatine or any other person.

*Act of* 1875, *ss.* 28, 29.

fee fund to National Debt Commissioners.

The Commissioners for the Reduction of the National Debt shall apply all cash transferred to them in pursuance of this section in the purchase of bank annuities, which shall be cancelled or otherwise disposed of in like manner as the said stock.

**28.** The Treasury shall cause to be prepared annually an account for the year ending the thirty-first day of March, shewing the receipts and expenditure during the preceding year in respect of the High Court of Justice and the Court of Appeal, and of any court, office, or officer, the fees taken in which or by whom can be fixed in pursuance of this act.

Annual account of fees and expenditure.

Such account shall be made out in such form and contain such particulars as the Treasury, with the concurrence of the Lord Chancellor, may from time to time direct.

Account of fees.

Every officer by whom or in whose office fees are taken which can be fixed in pursuance of this act, shall make such returns and give such information as the Treasury may from time to time require for the purpose of enabling them to make out the said account.

The said account shall be laid before both houses of parliament within one month after the thirty-first day of March in each year, if parliament is then sitting, or, if not, then within one month after the next meeting of parliament.

Submission of account to parliament.

See 29 & 30 Vict. c. 101, s. 7; 30 & 31 Vict. c. 122, ss. 1—8; 32 & 33 Vict. c. 91, s. 24.

**29.** Whereas fines and other moneys paid into the Court of Queens Bench for her Majesty's use are received by the Queen's coroner and attorney, and out of such moneys there

Discontinuance of certain payments to

*Act of* 1875, *ss.* 29, 30.

is paid in pursuance of a writ of privy seal an annual sum of forty pounds, at the rate of ten pounds for every term, to the second judge of the Court of Queen's Bench, and by section seven of the act of the sixth year of King George the Fourth, chapter eighty-four, it is enacted that the said termly allowance of ten pounds shall continue to be paid to the second judge in addition to his salary:

senior puisne judge of Queen's Bench and Queen's coroner.

And whereas out of the said moneys there is also payable in pursuance of the said writ of privy seal an annual sum of ten pounds to the Queen's coroner and attorney:

And whereas it is expedient to determine such payments:

Be it therefore enacted as follows:

After the passing of this act the said sums of forty pounds and ten pounds a year shall cease to be payable by the Queen's coroner and attorney out of the above-mentioned moneys.

Saving for existing judge and Queen's coroner.

So long as the person who, on the first day of March, one thousand eight hundred and seventy-five, was the second judge of the Court of Queen's Bench continues to be such second judge, there shall be payable to him out of the Consolidated Fund of the United Kingdom the annual sum of forty pounds in addition to his salary, and that annual sum shall be payable to him by instalments of ten pounds at the like times at which the said termly allowance of ten pounds has heretofore been payable to him, or at such other times as the Treasury, with the consent of the judge, may direct.

Payment to Queen's coroner and attorney.

So long as the person who, on the first day of March, one thousand eight hundred and seventy-five, was the Queen's coroner and attorney continues to hold that office, there shall be payable to him out of moneys provided by parliament the annual sum of ten pounds, and such sum shall be payable to him at the like time at which the said annual sum of ten pounds has heretofore been payable to him, or at such other times as the Treasury, with the consent of such Queen's coroner or attorney, may direct.

It appears from 6 Geo. 4, c. 84, s. 7, that so far back as 1761 the sum of forty pounds had long been assigned to the second judge referred to, "in respect of his labour and trouble in giving the charge to the grand jury and pronouncing judgment in his court against malefactors."

Amendment of Chancery Funds Act, 1872, as to the transfer of government securities to and from the paymaster-general on behalf of the Court of Chancery and the National Debt Commissioners.

**30.** Whereas by section sixteen of the Court of Chancery Funds Act, 1872, it is enacted that an order of the Court of Chancery may direct securities standing to the account of the paymaster-general on behalf of the Court of Chancery to be converted into cash, and that where such order refers to government securities, such securities shall be transferred to the Commissioners for the Reduction of the National Debt in manner therein mentioned:

And whereas the said section contains no provision for the converse cases of the conversion of cash into securities and the transfer of securities from the said commissioners to the ac-

count of the paymaster-general on behalf of the Court of Chancery:

*Act of* 1875, *ss.* 30—32.

And whereas such conversion and transfer, and the other matters provided by the said section, can be more conveniently provided for by rules made in pursuance of section eighteen of the said act; and it is expedient to remove doubts with respect to the power to provide by such rules for the investment in securities of money in court, and the conversion into money of securities in court:

Be it therefore enacted as follows:

Section sixteen of the Court of Chancery Funds Act, 1872, is hereby repealed.

Rules may from time to time be made in pursuance of section eighteen of the Court of Chancery Funds Act, 1872, with respect to the investment in securities of money in court, and the conversion into money of securities in court, and with respect to the transfer to the Commissioners for the Reduction of the National Debt of government securities ordered by the court to be sold or converted into cash, and to the transfer by those commissioners to the paymaster-general for the time being, on behalf of the Court of Chancery, of government securities ordered by the Court of Chancery to be purchased.

This section shall come into operation on the passing of this act, and shall be construed together with the Court of Chancery Funds Act, 1872, and shall be subject to any alteration in that act made by or in pursuance of the principal act or this act.

Abolition of secretary to the visitors of lunatics.

16 & 17 Vict. c. 70.

**31.** Whereas under the Lunacy Regulation Act, 1853, it is provided that there shall be a secretary to the visitors of lunatics therein mentioned, and it is expedient to abolish that office: Be it therefore enacted as follows:

After the passing of this act there shall cease to be a secretary to the visitors of lunatics.

The Treasury shall award, out of moneys provided by parliament, to the person who holds at the passing of this act the office of secretary to the visitors of lunatics such compensation, by way of annuity or otherwise, as, having regard to the conditions on which he was appointed to his office, the nature, salary, and emoluments of his office, and the duration of his services, they may think just and reasonable, so that the same be granted in accordance with the provisions and subject to the conditions contained in the Superannuation Act, 1859.

Amendment of Bankruptcy Acts, 1869, as to payment of unclaimed dividends to persons entitled.

**32.** Whereas by section nineteen of the Bankruptcy Repeal and Insolvent Court Act, 1869, it is enacted as follows:—"All dividends declared in any court acting under the acts relating to bankruptcy or the relief of insolvent debtors which remain unclaimed for five years after the commencement of this act, if declared before that commencement, and for five years after

*Act of* 1875, *ss.* 32—34.

the declaration of the dividends if declared after the commencement of this act, and all undivided surpluses of estates administered under the jurisdiction of such court which remain undivided for five years after the declaration of a final dividend in the case of bankruptcy, or for five years after the close of an insolvency under this act, shall be deemed vested in the crown, and shall be disposed of as the Commissioners of her Majesty's Treasury direct: Provided that at any time after such vesting the Lord Chancellor may, if he thinks fit, by reason of the disability or absence beyond seas of the person entitled to the sum so vested or for any other reason appearing to him sufficient, direct that the sum so vested shall be repaid out of moneys provided by parliament, and shall be distributed as it would have been if there had been no such vesting:"

And whereas a similar enactment with respect to unclaimed dividends in bankruptcy was made by section one hundred and sixteen of the Bankruptcy Act, 1869:

Facilitation of payment of unclaimed dividends in bankruptcy.

And whereas it is expedient to give to persons entitled to any such unclaimed dividends or other sums greater facilities for obtaining the same: Be it therefore enacted as follows:

Any court having jurisdiction in the matter of any bankruptcy or insolvency, upon being satisfied that any person claiming is entitled to any dividend or other payment out of the moneys vested in the crown in pursuance of section nineteen of the Bankruptcy Repeal and Insolvent Court Act, 1869, or of section one hundred and sixteen of the Bankruptcy Act, 1869, may order payment of the same in like manner as it might have done if the same had not by reason of the expiration of five years become vested in the crown in pursuance of the said sections.

This section shall take effect as from the passing of this act.

Repeal.

**33.** From and after the commencement of this act there shall be repealed—

* Page 92.

(1.) The acts specified in the second schedule* to this act, to the extent in the third column of that schedule mentioned, without prejudice to anything done or suffered before the said commencement under the enactments hereby repealed; also,

(2.) Any other enactment inconsistent with this act or the principal act.

Abolition of offices on vacancy.

† Page 53.

**34.** Whereas, by the seventy-seventh section† of the principal act, it is provided that, upon the occurrence of a vacancy in the office of any officer coming within the provisions of the said section, the Lord Chancellor, with the concurrence of the Treasury, may, in the event of such office being considered unnecessary, abolish the same, or may reduce the salary, or alter the designation or duties thereof, notwithstanding that

the patronage thereof may be vested in an existing judge; but that nothing in the said act contained shall interfere with the office of marshal attending any commissioner of assize: And whereas it is expedient to add to the said section: Be it enacted, that, upon the occurrence of any vacancy coming within the provisions of the said section, an appointment shall not be made thereto for the period of one month without the assent of the Lord Chancellor, given with the concurrence of the Treasury; and, further, the Lord Chancellor may, with the concurrence of the Treasury, suspend the making any appointment to such office for any period not later than the first day of January, 1877, and may, if it be necessary, make provision in such manner as he thinks fit for the temporary discharge, in the meantime, of the duties of such office.

No vacancy to be filled up for a month without assent of Lord Chancellor, who may suspend appointment till 1877.

By sect. 21 of the Act of 1876 (p. 104, *post*), the power of suspension was further extended to 1st January, 1878, by sect. 6 of the Act of 1877, *post* to 1st January 1879, and by the Judicature Act, 1878, 41 & 42 Vict. c. 35, to 1st January 1880. The passing of the Act of 1879 (Officers), p. 108, *post*, rendered any further extension unnecessary.

Chamber clerks.

**35.** Be it enacted, that any person who, at the time of the commencement of this act, shall hold the office of chamber clerk shall be eligible at any time thereafter for appointment to the like office, anything in the principal act to the contrary notwithstanding; and that, if any such person shall be so appointed after the commencement of this act, he shall, if the salary assigned to such office by or under the principal act be less than the salary received by him at the time of the commencement of this act, be entitled to receive a salary not less than that so formerly received by him, so long as he shall retain such office, but shall not be entitled to receive or claim any pension in respect of his service, unless the Treasury, in its absolute discretion, shall think fit to sanction the same.

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## First Schedule.

[For this Schedule, containing the Rules of Court enacted by sect. 16 of the act, p. 76, *ante*, see Rules of the Supreme Court, p. 122, *post*.]

## Second Schedule.*

| Session and Chapter. | Title. | Extent of Repeal. |
|---|---|---|
| 6 Geo. 4, c. 84 .... | An Act to provide for the augmenting the salaries of the Master of the Rolls and the Vice-Chancellor of England, the Chief Baron of the Court of Exchequer, and the Puisne Judges and Barons of the Courts in Westminster Hall, and to enable his Majesty to grant an annuity to such Vice-Chancellor, and additional annuities to such Master of the Rolls, Chief Baron, and Puisne Judges and Barons on their resignation of their respective offices. | Section seven. |
| 32 & 33 Vict. c. 71.. | The Bankruptcy Act, 1869 .... | Section one hundred and sixteen from "provided that at any time," inclusive, to end of the section. |
| 32 & 33 Vict. c. 83.. | The Bankruptcy Repeal and Insolvent Court Act, 1869. | Section nineteen from "provided that at any time," inclusive, to end of the section. |
| 36 & 37 Vict. c. 66.. | Supreme Court of Judicature Act, 1873. | So much of sections three and sixteen as relates to the London Court of Bankruptcy, section six, section nine, section ten, so much of section thirteen as relates to additional judges of the Court of Appeal, section thirty-four from "all matters pending in the London Court of Bankruptcy," to "London Court of Bankruptcy," section thirty-five, section forty-eight, section fifty-three, section sixty-three, section sixty-eight, section sixty-nine, section seventy, section seventy-one, section seventy-two, section seventy-three, section seventy-four, and the whole of the schedule. |

* See sect. 33 of the act, p. 90.

# THE APPELLATE JURISDICTION ACT, 1876.

39 & 40 Vict. c. 59.

*An Act for amending the Law in respect of the Appellate Jurisdiction of the House of Lords; and for other purposes.* [11th August, 1876.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

*Preliminary.*

Short title.

1. This act may be cited for all purposes as "The Appellate Jurisdiction Act, 1876."

Commencement of act.

2. This act shall, except where it is otherwise expressly provided, come into operation on the 1st day of November, 1876, which day is hereinafter referred to as the commencement of this act.

The provisions which came into operation before the 1st November, 1876, are ss. 6, 8.

*Appeal.*

Appeal to the House of Lords.

3. Subject as in this act mentioned an appeal shall lie to the house of lords from any order or judgment of any of the courts following; that is to say,

England. (1.) Of her Majesty's Court of Appeal in England; and

Scotland. (2.) Of any court in Scotland from which error or an appeal at or immediately before the commencement of this act lay to the house of lords by common law or by statute; and

Ireland. (3.) Of any court in Ireland from which error or an appeal at or immediately before the commencement of this act lay to the house of lords by common law or by statute.

*In what matters Appeal lies to House of Lords.*] For the jurisdiction of the Court of Appeal in England, see Act of 1873, sect. 19, p. 11, *ante*. The effect of the present section will be to give, from the courts in England, further rights of appeal to the house of lords than those which existed before the act. The right of appeal is now general, whereas

*Act of* 1876, *ss.* 3—5.

before the act it was given by particular acts as to particular matters. See 11 Geo. 4 & 1 Will. 4, c. 70, s. 8, as to appeal from judgments in error by the Exchequer Chamber, "upon any judgment given" by the Courts of Queen's Bench, Common Pleas and Exchequer; C. L. P. Act, 1854, ss. 34, 36, as to appeals from refusal of rules, &c., and Macqueen, p. 362, for list of matters on which error lay; 52 Geo. 3, c. 101, s. 1, as to appeal in charitable trust, and Macqueen, p. 89; 14 & 15 Vict. c. 83, s. 10, for appeals in matters of equity generally. There will now be an appeal from all interlocutory orders, even where made by a master. As to the power of the house of lords to impose "conditions" as to the value of the subject-matter in dispute, see sect. 11, *post*. As to stay of distribution of a fund pending an appeal, see *Polini* v. *Gray*, 41 L. T. 173; *Wilson* v. *Church*, *ib*. 296.

In Scotland, an appeal lies to the house of lords, by common law, from the Court of Session and the Commission of Teinds (Macqueen, 286), and by statute, 6 Ann. c. 53, s. 20, from the Court of Exchequer in Scotland. The Scotch Act of Union (6 Ann. c. 11) is silent as to appeals.

In Ireland, an appeal lies by the Act of Union (39 & 40 Geo. c. 67) and 8th Article of Union in any case where an appeal lay before the Union to the house of lords in Ireland; and by 40 Geo. 3, c. 39 (Irish Parliament), from any judgment of the Exchequer Chamber in Ireland; and by 19 & 20 Vict. c. 92, s. 14, from "all decisions, decrees or orders" of the Court of Appeal in Chancery of Ireland, whether on appeals in Chancery or from the Incumbered Estates Court.

Form of appeal to House of Lords.

* Page 473.

**4.** Every appeal shall be brought by way of petition * to the house of lords, praying that the matter of the order or judgment appealed against may be reviewed before her Majesty the Queen in her court of parliament, in order that the said court may determine what of right, and according to the law and custom of this realm, ought to be done in the subject-matter of such appeal.

Quorum and description of "Lords of Appeal."

**5.** An appeal shall not be heard and determined by the house of lords unless there are present at such hearing and determination not less than three of the following persons, in this act designated lords of appeal; that is to say,

(1.) The Lord Chancellor of Great Britain for the time being; and

(2.) The lords of appeal in ordinary to be appointed as in this act mentioned; and

(3.) Such peers of parliament as are for the time being holding or have held any of the offices in this act * described as high judicial offices.

* Page 105.

"High judicial office" is defined in the interpretation clause, sect. 25, *post*, as meaning the office of Lord Chancellor of Great Britain or Ireland, or of paid judge of the Judicial Committee of Privy Council, or of judge of one of the superior courts of Great Britain or Ireland.

It will be observed, that this section does not exclude peers not qualified as therein mentioned. The last occasion (A.D. 1783) on which the peers generally voted on a legal question was in the case of *The Bishop of London* v. *Fytche*, 1 East, 487. (See Sugden's Law of Property as administered in the House of Lords, p. 21.)

If the House be equally divided, the judgment of the court below stands affirmed, and no costs are given. (*Pryce* v. *Monmouthshire Railway Co.* 4 App. Cas. 197.)

*Act of* 1876, s. 6.

**6.** For the purpose of aiding the house of lords in the hearing and determination of appeals, her Majesty may, at any time after the passing of this act, by letters patent appoint two qualified persons to be lords of appeal in ordinary, but such appointment shall not take effect until the commencement of this act.

Appointment of two "Lords of Appeal in Ordinary."

A person shall not be qualified to be appointed by her Majesty a lord of appeal in ordinary unless he has been at or before the time of his appointment the holder for a period of not less than two years of some one or more of the offices in this act† described as high judicial offices, or has been at or before such time as aforesaid, for not less than fifteen years, a practising barrister in England or Ireland, or a practising advocate in Scotland.

Qualification.

† Page 105.

Every lord of appeal in ordinary shall hold his office during good behaviour, and shall continue to hold the same notwithstanding the demise of the crown, but he may be removed from such office on the address of both houses of parliament.

Removal.

There shall be paid to every lord of appeal in ordinary a salary of six thousand pounds a year.

Salary.

Every lord of appeal in ordinary, unless he is otherwise entitled to sit as a member of the house of lords, shall by virtue and according to the date of his appointment be entitled during his life to rank as a baron by such style as her Majesty may be pleased to appoint, and shall during the time that he continues in his office as a lord of appeal in ordinary, and no longer, be entitled to a writ of summons to attend, and to sit and vote in the house of lords; his dignity as a lord of parliament shall not descend to his heirs.

To rank as baron for life, but to sit and vote in House of Lords during tenure of office only.

On any lord of appeal in ordinary vacating his office, by death, resignation, or otherwise, her Majesty may fill up the vacancy by the appointment of another qualified person.

A lord of appeal in ordinary shall, if a privy councillor, be a member of the Judicial Committee of the Privy Council, and, subject to the due performance by a lord of appeal in ordinary of his duties as to the hearing and determining of appeals in the house of lords, it shall be his duty, being a privy councillor, to sit and act as a member of the Judicial Committee of the Privy Council (*a*).

Lord of Appeal in Ordinary, being Privy Councillor, to sit on Judicial Committee.

The first two Lords of Appeal in Ordinary were Sir Colin Blackburn, formerly Judge of the Queen's Bench Division of the High Court, now Lord Blackburn, and the Rt. Hon. E. S. Gordon, formerly Lord Advocate of Scotland, created Lord Gordon, and succeeded on his decease by the Rt. Hon. William Watson, formerly Lord Advocate of Scotland, created Lord Watson.

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(*a*) By a bill now (February, 1881) passing through Parliament, to be called the Judicial Committee Act, 1881, it is proposed to enact that "every person holding, or who has held in England, the office of Lord Justice of Appeal, shall if a member of her Majesty's Privy Council in England, be a member of the Judicial Committee of the Privy Council."

*Supplemental Provisions.*

Pension of Lord of Appeal in Ordinary.

**7.** Her Majesty may, by letters patent, grant to any lord of appeal in ordinary, who has served for fifteen years, or is disabled by permanent infirmity from the performance of the duties of his office, a pension by way of annuity to be continued during his life equal in amount to the pension which might under similar circumstances be granted to the Master of the Rolls, in pursuance of the Supreme Court of Judicature Act, 1873.*

* Page 7.

Previous service in any office, described in this act as a high judicial office,† shall for the purposes of pension be deemed equivalent to service in the office of a lord of appeal in ordinary under this act.

† Page 105.

The salary and pension payable to a lord of appeal in ordinary shall be charged on and paid out of the consolidated fund of the united kingdom, and shall accrue due from day to day, and shall be payable to the person entitled thereto, or to his executors and administrators, at such intervals in every year, not being longer than three months, as the Treasury may from time to time determine.

Hearing appeals during prorogation of parliament.

**8.** For preventing delay in the administration of justice, the house of lords may sit and act for the purpose of hearing and determining appeals, and also for the purpose of lords of appeal in ordinary taking their seats and the oaths, during any prorogation of parliament, at such time and in such manner as may be appointed by order of the house of lords made during the preceding session of parliament; and all orders and proceedings of the said house in relation to appeals and matters connected therewith during such prorogation, shall be as valid as if parliament had been then sitting, but no business other than the hearing and determination of appeals and the matters connected therewith, and lords of appeal in ordinary taking their seats and the oaths as aforesaid, shall be transacted by such house during such prorogation.

Any order of the house of lords may for the purposes of this act be made at any time after the passing of this act.

It was ordered, shortly before the close of the session of 1876, on the motion of the Lord Chancellor, that the house should commence sitting on the 21st November then next. In subsequent years also, the House has sat in November.

Hearing of appeals during dissolution of parliament.

**9.** If, on the occasion of a dissolution of Parliament, her Majesty is graciously pleased to think that it would be expedient, with a view to prevent delay in the administration of justice, to provide for the hearing and determination

of appeals during such dissolution, it shall be lawful for her Majesty, by writing under her sign manual, to authorize the lords of appeal, in the name of the house of lords, to hear and determine appeals during the dissolution of parliament, and for that purpose to sit in the house of lords at such times as may be thought expedient; and upon such authority as aforesaid being given by her Majesty, the lords of appeal may, during such dissolution, hear and determine appeals and act in all matters in relation thereto in the same manner in all respects as if their sittings were a continuation of the sittings of the house of lords, and may in the name of the house of lords exercise the jurisdiction of the house of lords accordingly.

This section has not as yet (February, 1881), been put into operation.

Fiat of Attorney-General.

**10.** An appeal shall not be entertained by the house of lords without the consent of the Attorney-General or other law officer of the crown in any case where proceedings in error or on appeal could not hitherto have been had in the house of lords without the fiat or consent of such officer.

The fiat of the Attorney-General is a condition precedent to the writ of error in criminal proceedings. (See *Castro* v. *Murray*, L. R., 10 Ex. 213; 44 L. J., M. C. 70; 32 L. T. 675; 23 W. R. 596.)

Procedure.

Standing Orders.

**11.** After the commencement of this act error shall not lie to the house of lords, and an appeal shall not lie from any of the courts from which an appeal to the house of lords is given by this act, except in manner provided by this act, and subject to such conditions as to the value of the subject-matter in dispute, and as to giving security for costs, and as to the time within which the appeal shall be brought, and generally as to all matters of practice and procedure, or otherwise, as may be imposed by orders of the house of lords.

For the Standing Orders in the subject-matter of this section, see p. 476, *post*. They provide, *inter alia*, that petitions of appeal must, with certain exceptions in favour of parties under disability, be presented within one year from the date of the judgment appealed against (S. O. I.), that the reasonableness of the appeal be certified by counsel (S. O. II.), and that the appellant give security for costs (S. O. IV.).

Scotland and Ireland.

**12.** Except in so far as may be authorized by orders of the house of lords an appeal shall not lie to the house of lords from any court in Scotland or Ireland in any case, which, according to the law or practice hitherto in use, could not have been reviewed by that house, either in error or on appeal.

This section indirectly authorizes the house of lords to allow appeals from Scotch and Irish courts in cases where hitherto no appeal has lain. For the law hitherto in use, see note to sect. 3, p. 93, *ante*.

*Act of* 1876, *ss.* 13, 14.

Pending business in House of Lords.

**13.** Nothing in this act contained shall affect the jurisdiction of the house of lords in respect of any error or appeal pending therein at the time of the commencement of this act, and any such error or appeal may be heard and determined, and all proceedings in relation thereto may be conducted in the same manner in all respects as if this act had not passed.

*Amendment of Acts.*

Amendment of Judicial Committee Act, 1871.

**14.** Whereas by the act of the session of the thirty-fourth and thirty-fifth years of the reign of her present Majesty, chapter ninety-one, intituled "An Act to make further provision for the despatch of business by the Judicial Committee of the Privy Council," her Majesty was empowered to appoint and did appoint four persons qualified as in that act mentioned to act as members of the Judicial Committee of the Privy Council at such salaries as are in the said act mentioned, in this act referred to as paid judges of the Judicial Committee of the Privy Council:

And whereas the power given by the said act of filling any vacancies occasioned by death, or otherwise, in the offices of the persons so appointed, has lapsed by efflux of time, and her Majesty has no power to fill any such vacancies.

Appointment of two additional Lords of Appeal in Ordinary on vacancy in office of paid Judges of Judicial Committee.

Be it enacted, that whenever any two of the paid judges of the Judicial Committee of the Privy Council have died or resigned, her Majesty may appoint a third lord of appeal in ordinary in addition to the lords of appeal in ordinary hereinbefore authorized to be appointed, and on the death or resignation of the remaining two paid judges of the Judicial Committee of the Privy Council her Majesty may appoint a fourth lord of appeal in ordinary in addition to the lords of appeal in ordinary aforesaid; and may from time to time fill up any vacancies occurring in the offices of such third and fourth lord of appeal in ordinary.

Any lord of appeal in ordinary appointed in pursuance of this section shall be appointed in the same manner, hold his office by the same tenure, be entitled to the same salary and pension, and in all respects be in the same position as if he were a lord of appeal in ordinary appointed in pursuance of the power in this act before given to her Majesty.

Ecclesiastical assessors of Judicial Committee.

* Page 435.

Her Majesty may, by order in council, with the advice of the Judicial Committee of her Majesty's Privy Council, or any five of them, of whom the Lord Chancellor shall be one, and of the archbishops and bishops being members of her Majesty's Privy Council, or any two of them, make rules* for the attendance, on the hearing of ecclesiastical cases, as assessors of the said committee, of such number of the archbishops and bishops of the Church of England as may be determined by such rules.

The rules may provide for the assessors being appointed for one or more year or years, or by rotation or otherwise,

and for filling up any temporary or other vacancies in the office of assessor. *Act of* 1876, *ss.* 14, 15.

Any rule made in pursuance of this section shall be laid before each house of parliament within forty days after it is made, if parliament be then sitting, or if not then sitting, within forty days after the commencement of the then next session of parliament. Submission of rules to parliament.

If either house of parliament present an address to her Majesty within forty days after any such rule has been laid before such house, praying that any such rule may be annulled, her Majesty may thereupon, by order in council, annul the same, and the rule so annulled shall thenceforth become void, but without prejudice nevertheless to the making of any other rule in its place, or to the validity of anything which may in the meantime have been done under any such rule.

By the Judicial Committee Act, 1871 (34 & 35 Vict. c. 91), the crown had power to appoint, within twelve months from the passing of that act, four persons, being or having been at the date of their appointment judges of one of the superior courts at Westminster, or a chief justice of the High Court of Judicature at Bengal, Madras or Bombay, to act as members of the Judicial Committee of the Privy Council, and to "hold their offices subject to such arrangements as might hereafter be made by parliament for the constitution of a Supreme Court of Appellate Jurisdiction." (See also as to the Judicial Committee, 2 & 3 Will. 4, c. 32; 3 & 4 Will. 4, c. 41; 6 & 7 Vict. c. 38; 7 & 8 Vict. c. 69; 8 & 9 Vict. c. 30; and 14 & 15 Vict. c. 83.) The Act of 1873, s. 21, provided for the transfer, by order in council, of the jurisdiction of the Judicial Committee to the Court of Appeal. The Act of 1875, sect. 2, suspended the operation of sect. 21 of the Act of 1873. The present act (sect. 24, p. 105, *post*) repeals both these prior enactments, and, while it appears still to contemplate the consolidation of the Judicial Committee with the final Court of Appeal, leaves the actual transfer of jurisdiction to be effected by a future substantive enactment.

The "four persons" appointed as members of the Judicial Committee were Sir Robert Collier (formerly Attorney-General), Sir Montague Smith (formerly Judge of the Court of Common Pleas), Sir James Colvile and Sir Barnes Peacock. Of these, Sir James Colvile died in December, 1880.

**15.** Whereas it is expedient to amend the constitution of her Majesty's Court of Appeal in manner hereinafter mentioned: Be it enacted that there shall be repealed so much of the fourth* section of the Supreme Court of Judicature Act, 1875, as provides that the ordinary judges of her Majesty's Court of Appeal (in this act referred to as "the Court of Appeal") shall not exceed three at any one time. Appointment of three additional ordinary Judges of Court of Appeal.

* Page 66.

In addition to the number of ordinary judges of the Court of Appeal authorized to be appointed by the Supreme Court of Judicature Act, 1875, her Majesty may appoint three additional ordinary judges of that court.

The first three appointments of additional judges under this act shall be made by such transfer to the Court of Appeal as is in this section mentioned of three judges of the High Court of Justice, and the vacancies so created in the High

*Act of* 1876, *s.* 15.

Court of Justice shall not be filled up, except in the event and to the extent hereinafter* mentioned.

* Page 103.

First three appointments to be by transfer of three judges from High Court.

Her Majesty may by writing, under her sign manual, either before or after the commencement of this act, but so as not to take effect until the commencement thereof, transfer to the Court of Appeal from the following divisions of the High Court of Justice, that is to say, the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division, such of the judges of the said divisions, not exceeding three in number, as to her Majesty may seem meet, each of whom shall have been a judge of any one or more of such divisions for not less than two years previously to his appointment, and shall not be an ex-officio judge of the Court of Appeal, and every judge so transferred shall be deemed an additional ordinary judge of the Court of Appeal in the same manner as if he had been appointed such judge by letters patent. No judge shall be so transferred without his own consent.

Obligation of additional ordinary judges to go circuit, &c.

† Page 28.

‡ Page 36.

Every additional ordinary judge of the said Court of Appeal appointed in pursuance of this act shall be subject to the provisions of sections twenty-nine† and thirty-seven‡ of the Supreme Court of Judicature Act, 1873, and shall be under an obligation to go circuits, and to act as commissioner under commissions of assize, or other commissions authorized to be issued in pursuance of the said act, in the same manner in all respects as if he were a judge of the High Court of Justice.

There shall be paid to every additional ordinary judge appointed in pursuance of this act, in addition to the salary which he would otherwise receive as an ordinary judge of the Court of Appeal, such sum on account of his expenses on circuit or under such commission as aforesaid as may be approved by the Treasury upon the recommendation of the Lord Chancellor.

Officers of additional ordinary judges.

§ Page 55.

Each of the judges of the High Court of Justice who is in pursuance of this act transferred to the Court of Appeal, by writing under the sign manual of her Majesty, shall retain such officers as are attached to his person as such judge, and are appointed and removable by him at his pleasure, in pursuance of the Supreme Court of Judicature Act, 1873,§ and the officers so attached shall have the same rank, and hold their offices by the same tenure, and upon the same terms and conditions, and receive the same salaries, and if entitled to pensions be entitled to the same pensions, and shall, as nearly as may be, perform the same duties as if the judges to whom they are attached had not been transferred to the Court of Appeal.

Further appointments, &c.

* Page 4.

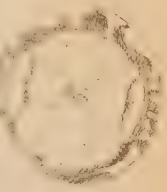
† Page 66.

Subject as aforesaid, the provisions of the Supreme Court of Judicature Acts, 1873* and 1875,† for the time being in force in relation to the appointment of ordinary judges of her Majesty's Court of Appeal, and to their tenure of office, and to their precedence, and to their salaries and pensions, and to

the officers to be attached to such judges, and all other provisions relating to such ordinary judges, shall apply to the additional ordinary judges appointed in pursuance of this section in the same manner as they apply to the other ordinary judges of the said court.

*Act of* 1876, *ss.* 15, 16.

For the purpose of a transfer to the Court of Appeal under this section, service as a judge in a court whose jurisdiction is transferred to the High Court shall be deemed to have been service as a judge in any one or more of such divisions of the High Court as are in this section in that behalf mentioned; and for the purpose of the pension of any person appointed under this act an additional ordinary judge of appeal, service in the High Court of Justice, or in any court whose jurisdiction is transferred to the High Court of Justice or to the Court of Appeal, shall be deemed to have been service in the Court of Appeal.



Sir G. W. Bramwell, Sir W. B. Brett, and Sir R. P. Amphlett, judges of the High Court, were appointed the first additional ordinary judges. Sir R. P. Amphlett, retiring in 1877, was succeeded by the Hon. A. Thesiger, Q.C., who was succeeded on his decease in 1880 by Sir Robert Lush, judge of the Queen's Bench Division. The present section, if it confers a style on the additional ordinary judges, confers the style of "Justices of Appeal" by general words (and see sect. 4 of the Act of 1875, p. 67, *ante*); but the style of "Lords Justices of Appeal" is given by the Act of 1877 (40 Vict. c. 9), s. 4, p. 107, *post*.

**16.** Orders for constituting and holding divisional courts of the Court of Appeal, and for regulating the sittings of the Court of Appeal, and of the divisional Courts of Appeal, may be made, and when made, in like manner rescinded or altered, by the president of the Court of Appeal, with the concurrence of the ordinary judges of the Court of Appeal, or any three of them; and so much of section seventeen ‡ of the Supreme Court of Judicature Act, 1875, as relates to the regulation of any matters subject to be regulated by orders under this section, and so much of any rules of court as may be inconsistent with any order made under this section, shall be repealed, without prejudice nevertheless to any rules of court made in pursuance of the section so repealed, so long as such rules of court remain unaffected by orders made in pursuance of this section.

Orders in relation to conduct of business in Court of Appeal.

‡ Page 77.

By sect. 6 of the Act of 1875 (p. 68, *ante*), the Lord Chancellor is president of the Court of Appeal.

For the present rules in the subject-matter of this section, see Ord. LXI., Rule 1, p. 269. No orders under this section itself have as yet (February, 1881) been issued.

**17.** On and after the 1st day of December, 1876, every action and proceeding in the High Court of Justice, and all business arising out of the same, except as is hereinafter provided, shall, so far as is practicable and convenient, be

Disposal of business in High Court before single judge.

*Act of* 1876, *s.* 17.

heard, determined, and disposed of before a single judge, and all proceedings in an action subsequent to the hearing or trial, and down to and including the final judgment or order, except as aforesaid, and always excepting any proceedings on appeal in the Court of Appeal, shall, so far as is practicable and convenient, be had and taken before the judge before whom the trial or hearing of the cause took place: Provided nevertheless, that divisional courts of the High Court of Justice may be held for the transaction of any business which may for the time being be ordered by rules of court to be heard by a divisional court; and any such divisional court when held shall be constituted of two judges of the court and no more, unless the president of the division to which such divisional court belongs, with the concurrence of the other judges of such division, or a majority thereof, is of opinion that such divisional court should be constituted of a greater number of judges than two, in which case such court may be constituted of such number of judges as the president, with such concurrence as aforesaid, may think expedient; nevertheless the decisions of a divisional court shall not be invalidated by reason of such court being constituted of a greater number than two judges; and [*sic*]

Divisional courts.

All future Rules of Court to be made by committee of judges.

* Page 563.

Rules of court* for carrying into effect the enactments contained in this section shall be made on or before the 1st day of December, 1876, and may be afterwards altered, and all rules of court to be made after the passing of this act, whether made under the Supreme Court of Judicature Act, 1875, or this act, shall be made by any three or more of the following persons, of whom the Lord Chancellor shall be one, namely, the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, *the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer* (*a*) and four other judges of the Supreme Court of Judicature, to be from time to time appointed for the purpose by the Lord Chancellor in writing under his hand, such appointment to continue for such time as shall be specified therein, and all such rules of court shall be laid before each house of parliament within such time and subject to be annulled in such manner as is provided by the Supreme Court of Judicature Act, 1875.†

† Page 84.

Partial repeal of Act of 1873.

There shall be repealed on and after the 1st day of December, 1876, so much of sects. 40, 41, 42, 43, 44, and 46 of the Supreme Court of Judicature Act, 1873, as is inconsistent with the provisions of this section.

As to the jurisdiction of a single judge under the Act of 1873, see sect. 39 of that act and note, p. 37, *ante*. For rules of court for carrying into effect the enactments of this section, see Ord. XXXVI., Rule 22*a*,

(*a*) These offices are abolished by Order in Council, *post*, under s. 32 of the Act of 1873, p. 31, *ante*.

p. 211; Ord. XXXIX., Rules 1 and 1*a*, p. 219 and notes; Ord. XL., Rules 4 to 6, p. 221 and notes; Ord. LVIIA, and note; Ord. LVIII., Rule 19, and note.

By writing dated the 7th November, 1876, Lord Cairns, C., appointed Sir W. B. Brett, L. J., Lush, J., Pollock, B., and Manisty, J., to be the four judges to act with the ex-officio judges on the committee for making rules of court, the appointment to continue in force until the 1st of January, 1878.

The same four learned judges were re-appointed by Lord Cairns, C., on the 1st June, 1878, to act until the 1st January, 1879, and on the 22nd March, 1879, to act until the 1st January, 1880; and, with the exception of Brett, L. J., who appears to have been succeeded by Lindley, J., appear as signing the Rules of May, 1880. (See p. 581.)

Power to fill vacancies in High Court caused by removal of judges to Court of Appeal.

**18.** Whenever any two of the said paid judges of the Judicial Committee of the Privy Council have died or resigned, her Majesty may, upon an address from both houses of parliament, representing that the state of business in the High Court of Justice is such as to require the appointment of an additional judge, fill up one of the vacancies created by the transfer hereinbefore authorized,* by appointing one new judge of the said High Court in any division thereof; and on the death or retirement of the remaining two paid judges of the said Judicial Committee, her Majesty may, upon the like address, fill up in like manner another of the said vacancies, and from time to time fill up any vacancies occurring in the offices of judges so appointed.

* Page 100.

See sect. 14 and note, p. 98, *ante*.

Attendance of judges of High Court on Court of Appeal.

**19.** Where a judge of the High Court of Justice has been requested to attend as an additional judge at the sittings of the Court of Appeal under section four† of the Supreme Court of Judicature Act, 1873, such judge shall, although the period has expired during which his attendance was requested, attend the sittings of the Court of Appeal for the purpose of giving judgment or otherwise in relation to any case which may have been heard by the Court of Appeal during his attendance on the Court of Appeal.

† Page 66.

Abolition of appeal from High Court in cases of statutory finality.

**20.** Where by act of parliament it is provided that the decision of any court or judge the jurisdiction of which court or judge is transferred to the High Court of Justice is to be final, an appeal shall not lie in any such case from the decision of the High Court of Justice, or of any judge thereof, to her Majesty's Court of Appeal.

This section very much narrows the powers of appeal originally given by the Act of 1873. See note to sect. 19 of that act, p. 11, *ante*, where the cases of statutory finality are enumerated.

In *Crush* v. *Turner* (3 Ex. D. 303, and p. 41, *ante*), it was held that this section did not preclude an appeal *by leave* in cases within sect. 45 of the Act of 1878, *ante*, p. 40.

*Act of* 1876, *ss.* 21—23.

Suspension until January, 1878, of power to fill up vacancies in legal offices.

* Page 90.

† Page 52.

**21.** Whereas by section thirty-four* of the Supreme Court of Judicature Act, 1875, it is enacted that upon the occurrence of any vacancy in an office coming within the provisions of section seventy-seven† of the Supreme Court of Judicature Act, 1873, the Lord High Chancellor of Great Britain may, with the concurrence of the Treasury, suspend the making any appointment to such office for any period not later than the first day of January, one thousand eight hundred and seventy-seven, and may, if it be necessary, make provision in such manner as he thinks fit for the temporary discharge in the meantime of the duties of such office, and it is expedient to extend the said period as hereinafter mentioned: Be it therefore enacted as follows:

The said section shall be construed as if the first day of January one thousand eight hundred and seventy-eight were therein inserted in lieu of the first day of January one thousand eight hundred and seventy-seven.

By the Act of 1877, s. 6, *post*, p. 107, 1st January, 1879, and by the Act of 1878, s. 2, 1st January, 1880, was substituted for 1st January, 1877, in the Act of 1875. The Judicature (Officers) Act, 1879, *post*, p. 108, which came into operation on the 28th October, 1879, appears to have rendered any further continuation of the suspension unnecessary. See especially, sect. 8, subs. 3, and sect. 14 of that act.

Appointment of deputy by district registrar.

**22.** A district registrar of the Supreme Court of Judicature may from time to time, but in each case with the approval of the Lord Chancellor and subject to such regulations as the Lord Chancellor may from time to time make, appoint a deputy, and all acts authorized or required to be done by, to, or before a district registrar may be done by, to, or before any deputy so appointed: Provided always, that in no case such appointment shall be made for a period exceeding three months. This section shall come into force at the time of the passing of this act.

Sects. 60—66 (pp. 48, *ante*) of the Act of 1873, sect. 13 of the Act of 1875 (p. 75, *ante*) and Ord. XXXV. (p. 199, *post*), relate to district registrars.

Appointment of vice-admiral, judge, and officers of Vice-Admiralty Court.

**23.** Whereas by the Vice-Admiralty Courts Act, 1863, it is enacted that "nothing in this act contained shall be taken to affect the power of the Admiralty to appoint any vice-admiral, or any judge, registrar, marshal, or other officer of any Vice-Admiralty Court, as heretofore, by warrant from the Admiralty, and by letters patent issued under the seal of the High Court of Admiralty of England:"

And whereas since the commencement of the Supreme Court of Judicature Acts, 1873 and 1875, doubts have arisen with respect to the exercise of the said power of the Admiralty, and it is expedient to remove such doubts: Be it therefore enacted as follows:

Any power of the Admiralty to appoint or cancel the ap-

pointment of a vice-admiral, or a judge, registrar, marshal, or other officer of a Vice-Admiralty Court, may, after the passing of this act, be exercised by some writing under the hands of the Admiralty, and the seal of the office of Admiralty, and in such form as the Admiralty from time to time direct.

Every appointment so made shall have the same effect, and every vice-admiral, judge, registrar, marshal, and other officer so appointed shall have the same jurisdiction, power, and authority, and be subject to the same obligation, as if he had been appointed before the commencement of the Supreme Court of Judicature Acts, 1873 and 1875, under the seal of the High Court of Admiralty of England.

"Admiralty" in this section means the Lord High Admiral, or the commissioners for executing his office, or any two of such commissioners.

*Repeal and Definitions.*

Repeal of certain sections of the Church Discipline Act and of the Supreme Court of Judicature Acts.

**24.** Section sixteen of the Act for better enforcing Church Discipline, passed in the session of the third and fourth years of the reign of her present Majesty, chapter eighty-six, and sections twenty, twenty-one, and fifty-five of the Supreme Court of Judicature Act, 1873, and section two of the Supreme Court of Judicature Act, 1875, shall be repealed (with the exception of so much of section two as declares the day on which that act is to commence.

By sect. 16 of 3 & 4 Vict. c. 86 it was provided that archbishops and bishops, being privy councillors, should be members of the Judicial Committee for the purposes of ecclesiastical appeals. This provision is now repealed, as inconsistent with that paragraph of sect. 14 of the present act (p. 98, *ante*), which enacts rules made by order in council are to designate assessors in ecclesiastical appeals.

Definitions.

**25.** In this act, if not inconsistent with the context, the following expressions have the meaning hereinafter respectively assigned to them; that is to say,

High judicial office.

"High judicial office" means any of the following offices; that is to say,

The office of Lord Chancellor of Great Britain or Ireland, or of paid judge of the Judicial Committee of the Privy Council, or of judge of one of her Majesty's superior courts of Great Britain and Ireland:

Superior courts.

"Superior courts of Great Britain and Ireland" means and includes,—

As to England, her Majesty's High Court of Justice and her Majesty's Court of Appeal, and the superior courts of law and equity in England as they existed before the constitution of her Majesty's High Court of Justice; and

As to Ireland, the superior courts of law and equity at Dublin; and

As to Scotland, the Court of Session:

Error.

"Error" includes a writ of error or any proceedings in or by way of error.

THE

# SUPREME COURT OF JUDICATURE ACT, 1877.

40 Vict. c. 9.

*An Act for amending the Supreme Court of Judicature Acts, 1873 and 1875.* [24th April, 1877.]

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Construction and short title of act.

**1.** This act shall, so far as is consistent with the tenor thereof, be construed as one with the Supreme Court of Judicature Acts, 1873 and 1875, and together with the said acts may be cited as The Supreme Court of Judicature Acts, 1873, 1875, 1877, and this act may be cited separately as "The Supreme Court of Judicature Act, 1877."

Appointment of additional judge of High Court of Justice.

**2.** It shall be lawful for her Majesty to appoint a judge of the High Court of Justice in addition to the number of judges of that court authorized to be appointed by the Supreme Court of Judicature Acts, 1873 and 1875.

Mr. Justice Fry was appointed judge under this section.

Position of additional judge.

**3.** The judge appointed in pursuance of this act shall be in the same position as if he had been appointed a puisne judge of the said High Court in pursuance of the Supreme Court of Judicature Acts, 1873 and 1875; and all the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, for the time being in force in relation to the qualification and appointment of puisne judges of the said High Court, and to their tenure of office, and to their precedence, and to their salaries and pensions, and to the officers to be attached to the persons of such judges, and all other provisions relating to such puisne judges, or any of them, with the exception of such provisions as apply to existing judges only, shall apply to the additional judge appointed in pursuance of this section

in the same manner as they apply to the other puisne judges of the said court respectively. The judge appointed in pursuance of this act shall be attached to the Chancery Division of the said High Court, subject to such power of transfer as is in the Supreme Court of Judicature Act, 1873, mentioned.

*Act of* 1877, *ss.* 3—6.

**4.** And whereas it is expedient that a uniform style should be provided for the ordinary judges of the Court of Appeal and for the judges of the High Court of Justice (other than the presidents of divisions): Be it enacted, that the ordinary judges of the Court of Appeal shall be styled Lords Justices of Appeal, and the judges of the High Court of Justice (other than the presidents of divisions) shall be styled justices of the High Court.

Style of judges.

The former style was "Justices of Appeal" (see Act of 1875, s. 4), and "Judge of Her Majesty's High Court of Justice" (see Act of 1873, s. 5).

**5.** A puisne judge of the High Court of Justice means for the purposes of this act a judge of the High Court of Justice other than the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, *the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron* (*a*), and their successors respectively.

Definition of puisne judge.

**6.** Section thirty-four of the Supreme Court of Judicature Act, 1875, shall be construed as if the first day of January one thousand eight hundred and seventy-nine were therein inserted in lieu of the first day of January one thousand eight hundred and seventy-seven.

Continuation until 1st Jan. 1879, of sect. 34 of 38 & 39 Vict. c. 77.

(*a*.) These offices are abolished by Order in Council (p. 438, *post*), under s. 32 of the Act of 1873, p. 31, *ante*.

THE

# JUDICATURE (OFFICERS) ACT, 1879.

42 & 43 Vict. c. 78.

*An Act to amend the Supreme Court of Judicature Acts.*

[15th August, 1879.]

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

*Preliminary.*

Construction and short title of act.

**1.** This act shall be construed as one with the Supreme Court of Judicature Acts, 1873, 1875, and 1877, and may be cited together with those acts as the Supreme Court of Judicature Acts, 1873 to 1879, and separately as the Supreme Court of Judicature (Officers) Act, 1879.

Commencement of act.

**2.** This act shall, except where it is otherwise expressed, come into operation on the twenty-eighth day of October one thousand eight hundred and seventy-nine, which day is in this act referred to as the commencement of this act.

Definition of "existing."

**3.** In this act "existing" means existing at the commencement of this act.

Compare s. 100 of the Act of 1873, p. 63, *ante*.

*Central Office.*

Establishment of central office.

**4.** There shall be established a central office of the Supreme Court of Judicature.

Certain offices amalgamated with central office.

**5.** There shall be concentrated in and amalgamated with the central office the following offices; namely,

The record and writ clerks office;

The enrolment office;

The report office;

The offices of the masters of the Queen's Bench, Common Pleas, and Exchequer Divisions, including the bills of sale office;

*Act of* 1879, *ss.* 5—7.

The offices of the associates in the Queen's Bench, Common Pleas, and Exchequer Divisions;
The Crown office of the Queen's Bench Division;
The Queen's remembrancer's office;
The office of the registrar of certificates of acknowledgments of deeds by married women;
The office of the registrar of judgments; and
such other offices of the Supreme Court as may from time to time be amalgamated with the central office by rules of court.

The three first offices mentioned in this section belonged to the Chancery Division. The Chancery pay office, the Chancery registrar's office, the Examiner's office, and the office of the Clerk of the Crown in Chancery are the principal "other offices" comprised in the concluding paragraph.

Transfer of certain officers to central office.

6. There shall be transferred to the central office,—
(*a.*) The existing record and writ clerks;
The existing clerk of enrolments;
The existing clerks in the report office;
The existing masters of the Queen's Bench, Common Pleas, and Exchequer Divisions;
The existing associates in the Queen's Bench, Common Pleas, and Exchequer Divisions;
The existing Queen's remembrancer;
The existing Queen's coroner and attorney, and the existing master of the Crown office other than the Queen's coroner and attorney;
The existing registrar of certificates of acknowledgment of deeds by married women; and
The existing registrar of judgments;
with their respective clerks and messengers, or the clerks and messengers employed in their respective offices:
(*b.*) Such of the existing officers employed under the registrars of the Probate, Divorce, and Admiralty Division as the judges of that division respectively select as necessary for the performance of the duties to be performed in the central office; and
(*c.*) Such other officers of and persons employed in the Supreme Court or the offices thereof as are from time to time transferred to the central office by rules of court.

The three first sets of officers mentioned in this section belonged to the Chancery Division. The chief clerks, and the conveyancing counsel in the Chancery Division (as to whom, see 15 & 16 Vict. c. 80, s. 16 *et seq.*, and s. 40 *et seq.*), and the officers in the Chancery pay office and the Chancery registrar's office, and the official referees (as to whom, see s. 83 of the Act of 1873), are the principal "other officers" comprised in the concluding paragraph.

Central office to be under control of Masters.

7. The central office shall be under the control and superintendence of officers called masters of the Supreme Court of Judicature.

*Act of* 1879, *ss.* 7—9.

Provided that the existing clerk of enrolments shall as long as he continues to hold that office retain his control and superintendence over the business heretofore performed in his office and over the persons for the time being employed in the performance of that business.

First masters of Supreme Court.

**8.** (1.) The first masters of the Supreme Court of Judicature shall be—

The existing masters of the Queen's Bench, Common Pleas, and Exchequer Divisions;

The existing Queen's coroner and attorney;

The existing master of the crown office other than the Queen's coroner and attorney;

The existing record and writ clerks; and

The existing associates in the Queen's Bench, Common Pleas, and Exchequer Divisions.

(2.) The salaries of the first masters of the Supreme Court shall be:

(*a.*) In the case of each existing master of the Queen's Bench, Common Pleas, or Exchequer Division, the salary to which he is entitled as such master at the commencement of this act:

(*b.*) In the case of the existing Queen's coroner and attorney, and the existing master of the crown office other than the Queen's coroner and attorney, the yearly sum of fifteen hundred pounds:

(*c.*) In the case of every other master of the Supreme Court, the salary to which he would have been entitled if he had been appointed a master of the Queen's Bench, Common Pleas, or Exchequer Division immediately before the commencement of this act.

Number of Masters not to exceed 18.

(3.) A vacancy in the office of any master of the Supreme Court other than a master being Queen's coroner and attorney or master of the crown office, shall not be filled until the number of masters is reduced to eighteen.

The existing masters of the Queen's Bench, &c. Divisions were sixteen in number, exclusive of the Queen's coroner and attorney and the master of the crown office. The existing record and writ clerks were two, and the existing associates of the Queen's Bench, &c. Divisions three, in number.

The salaries of the masters before this act were, under the Common Law Courts' Fees and Salaries Act, 1866 (29 & 30 Vict. c. 101), s. 5, 1,200*l.* per annum for the first three years, and 1,500*l.* a year afterwards.

The present (February, 1881) number of masters, exclusive of the Queen's coroner and attorney and master of the crown office, amounts to nineteen.

Appointment and removal of officers of central office.

**9.** (1.) The right of filling any vacancy in the office of master of the Supreme Court, or in any clerkship in the central office, shall, subject as in the next sub-section mentioned, be vested in the Lord Chief Justice of England, the Master of the Rolls, *the Lord Chief Justice of the Common Pleas, and the*

*the Lord Chief Baron of the Exchequer* (*a*) in rotation and in such order as they by agreement among themselves determine.

(2.) The right of filling any vacancy in the office of Queen's coroner and attorney and of master in the crown office shall be vested in the Lord Chief Justice of England, and the persons appointed to these offices respectively shall be by virtue of their appointment masters of the Supreme Court.

(3.) Subject as aforesaid, the right of filling any vacancy in, and of making any new appointment in or for the purposes of, the central office shall be vested in the Lord Chancellor with the concurrence of the Treasury.

(4.) Any officer of the central office may be removed by a majority of the judges mentioned in this section, with the approval of the Lord Chancellor, for reasons to be assigned in the order of removal.

Qualification of masters of Supreme Court.

**10.** A person shall not be qualified to be appointed a master of the Supreme Court unless he is or has been a practising barrister or solicitor of five years' standing, or has practised for five years as a special pleader or as a special pleader and barrister; but nothing in this section shall affect the qualification of any existing officer of the Supreme Court to be appointed to any office dealt with by this act.

Tenure of masters of Supreme Court.

**11.** Every master of the Supreme Court shall hold office during good behaviour.

This and the preceding section are substantially identical with 7 Will. 4 & 1 Vict. c. 30, ss. 10, 13.

Business of central office.

* Page 265.

**12.** (1.) The business to be performed in the central office shall, subject to rules of court,* comprise all the business performed in the offices by or in pursuance of this act amalgamated with the central office, and shall be distributed among the several officers of the central office in such manner as may be directed by rules of court.

(2.) The several officers of the central office shall be interchangeable one with another and shall be capable of performing and liable to perform the duties of each other in any department of the office, and generally shall perform such duties and have such powers in relation to the business of the Supreme Court as may be directed by rules of court, subject to this qualification, that the duties required to be performed by any officer transferred to the central office by or in pursuance of this act shall, except as far as they are modified with his consent, be the same as or analogous to those which he performed before being so transferred.

(3.) Subject as aforesaid, all officers of the central office shall continue to perform the duties heretofore performed by them in their respective offices, and to have and exercise the

(*a*) By Order in Council under s. 32 of the Act of 1873 these offices are merged in the office of Lord Chief Justice of England.

*Act of* 1879, *ss.* 13—16.

powers heretofore vested in them, in the same manner, as nearly as may be, as if this act had not passed.

Classification of clerks of central office.

**13.** The clerks employed in the central office shall be classified as principal clerks, first-class clerks, second-class clerks, and copying clerks, or in such other manner as the Lord Chancellor, with the concurrence of the Treasury, from time to time directs.

Abolition of certain offices and continuance of others.

**14.** (1.) The offices specified in the first part of the first schedule to this act are hereby abolished as from the commencement of this act.

(2.) Each of the offices specified in the second part of the first schedule to this act shall be abolished on the occurrence of the next vacancy therein.

(3.) On and after the occurrence of the next vacancy in any of the offices specified in the third part of the first schedule to this act, the senior master for the time being of the Supreme Court shall hold and perform the duties of the office, with such additional salary in respect of the office of Queen's remembrancer as the Lord Chancellor, with the concurrence of the Treasury, may determine.

(4.) Provided as follows:

(*a*.) For the purposes of this section the existing masters of the Queen's Bench, Common Pleas, and Exchequer Divisions shall collectively rank as senior to the other first masters of the Supreme Court;

(*b*.) Subject as aforesaid, each of the first masters of the Supreme Court shall, for the purposes of this section, rank in seniority according to the date of his first appointment to an office in the Supreme Court, or in any court of which the jurisdiction has been transferred to the Supreme Court.

*Salaries and Pensions.*

As to salaries, pensions, &c. of officers of Supreme Court.

**15.** (1.) The salaries of the several officers of the Supreme Court shall be of such amounts as the Lord Chancellor, with the concurrence of the Treasury, from time to time determines, and every such officer shall be deemed to be for the purposes of salary and pension a permanent civil servant of the state.

(2.) The salaries of all officers of the Supreme Court shall be paid out of money provided by Parliament.

Every pension and compensation shall be paid out of money provided by Parliament.

Mode of application for pension.

**16.** The application for a pension under this act shall be by a petition to the Lord Chancellor setting forth the service and emoluments of the applicant in such form and with such particulars as the Lord Chancellor directs.

If the Lord Chancellor approves of the application he shall transmit it to the Treasury for their examination and award, and the Treasury shall thereupon inquire into the application,

and if the claim made thereby is established to their satisfaction, shall award and direct payment of the pension to which the applicant is entitled. *Act of* 1879, *ss.* 16—20.

This section does not fix the pension as precisely as sect. 85 of the Act of 1873, or as 29 & 30 Vict. c. 68, s. 3, repealed by sect. 29 of the present act; but it is presumed that the principles of the Superannuation Act, 1859, which those enactments incorporated, are intended still to be followed. The scale of pensions fixed by the Superannuation Act, 1859, is —after ten years' service, ten-sixtieths of the salary of the office vacated, and one additional sixtieth for every year of service up to the fortieth.

Power to declare office professional, and add years to service of holder thereof.

**17.** It shall be lawful for the Lord Chancellor from time to time to declare by writing signed by him that any office entitling to a pension under this act is an office for the due and efficient discharge of the duties of which professional or other peculiar qualifications, not ordinarily to be acquired in the public service, are required, and that it is in the interest of the public that persons be appointed thereto at an age exceeding that at which public service ordinarily begins; and thereupon it shall be lawful for the treasury to order that when the holder of any such office retires from public service, a specified number of years, not exceeding twenty, shall, in computing the amount of pension payable to the officer, be added to the number of years during which he has actually served.

Every such order shall have the same effect as an order or warrant made under section four of the Superannuation Act, 1859. 22 Vict. c. 26.

Power for Lord Chancellor to remove disabled officer.

**18.** If any officer of the Supreme Court, being afflicted with any infirmity which disables him from the due execution of his office, refuses to resign or becomes incapable of resigning his office, it shall be lawful for the Lord Chancellor by order to remove him from his office.

Provision as to persons entitled to pensions under previous acts.

**19.** (1.) Where a person has at the commencement of this act a right to succeed to an office to which a pension or superannuation allowance is attached under any previous act, nothing in this act shall prejudicially affect his right to claim a pension or allowance under that act.

(2.) Any officer of the Supreme Court who is or might become entitled to a pension or superannuation allowance under any previous act may, if he thinks fit, instead of claiming a pension or allowance under that act, claim a pension under this act, and thereupon the same proceedings shall be taken as if he had been entitled to a pension under this act.

Conditions of obtaining pensions under this act.

**20.** An officer of the Supreme Court appointed after the commencement of this act shall not be entitled to a pension under this act unless he has been admitted to his office with a certificate from the Civil Service Commissioners.

*Act of* 1879, *ss.* 20—24.

Provided that the Lord Chancellor may from time to time, with the concurrence of the treasury, make, revoke, and alter orders declaring that this section shall not apply to any office or class of offices specified in the order, and the application of this section shall be limited in accordance with any such order.

Application of salary and pension provisions to officers in lunacy.

**21.** For the purposes of the provisions of this act relating to salaries and pensions, an officer in lunacy shall be in the same position as if he were an officer of the Supreme Court.

*Rules of Court.*

Making rules of court.

* Page 77.

† Page 102.

**22.** (1.) Section seventeen of the Supreme Court of Judicature Act, 1875,* as amended by section seventeen of the Appellate Jurisdiction Act, 1876,† shall extend to authorize the making, in pursuance of those sections, of rules of court under or for the purposes of this act, and under or for the purposes of any act passed after the passing of this act which expressly or by implication authorizes or directs the making of rules of court, and also under or for the purposes of any act passed before the passing of this act, which, so far as unrepealed, expressly or by implication authorizes or directs the making of any orders, rules, or regulations for any purpose for which rules of court can be made under the above-mentioned sections, or for any similar purpose; provided that where the concurrence of the treasury is required in making rules of court, or any such orders, rules, or regulations, rules of court under this section shall not be made without that concurrence.

(2.) Such rules of court as are requisite for bringing this act into operation shall be made as soon as may be after the passing of this act, but no rules of court made under this act shall come into operation before the commencement of this act.

*Supplemental.*

Saving rights of officers transferred.

**23.** Subject to the express provisions of this act, the officers transferred by or in pursuance of this act shall have the same rank and hold their offices by the same tenure and upon the same terms and conditions, and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this act had not passed.

Doubts as to status, &c. of officers to be determined by rules of court.

**24.** Where a doubt exists as to the position under this act of any existing officer affected by this act, or whether any person is an officer of the Supreme Court within the meaning of this act, the doubt may be determined by rules of court, subject to this proviso, that a rule of court made under this section shall not alter the tenure of office, rank, pension, if any, or salary of the officer, or require him without his consent to perform any duties other than duties analogous to those which he has already performed.

Compensation for prejudice to right or privilege.

**25.** If any person deems himself aggrieved by reason of any right or privilege, customary or otherwise, being prejudicially affected by this act or the Courts of Justice Building Act, 1865, or any act amending the same, or by anything done under any such act, he may present a petition to the Lord Chancellor stating the circumstances of the case and asking for the compensation to which the petitioner deems himself entitled; and if the Lord Chancellor thinks the petitioner entitled to compensation he shall transmit the petition to the treasury, stating the grounds on which he thinks the petitioner so entitled, and the treasury shall have discretion to award such compensation, if any, as in their opinion is just and reasonable.

Saving as to payment of fees.

**26.** Nothing in or done under this act shall affect any liability to the payment of fees payable to any officer or in any office affected by this act, and all such fees shall, subject to any regulations with regard thereto which may from time to time be made by rules of court, continue to be payable in the same manner and to the same persons as heretofore.

Construction of enactments, &c. referring to officers or offices affected by this act.

**27.** Any enactment or document referring to an officer or office abolished by or under this act, shall, as far as it continues applicable, be construed as referring to the officer or office substituted by or under this act, and rules of court may be made for determining what officer or office is so substituted.

Name of new law courts.

**28.** The buildings erected under the Courts of Justice Building Act, 1865, and the Courts of Justice Concentration (Site) Act, 1865, together with all additions thereto, shall be styled the Royal Courts of Justice.

Repeal of enactments in second schedule.

**29.** Whereas by reason of the provisions of the Supreme Court of Judicature Act, 1873, and the acts amending the same, including this act, divers enactments relating to officers and offices of the Supreme Court, and to the making of orders, rules, and regulations for purposes connected with the Supreme Court, have become unnecessary, and it is expedient that they be specifically repealed, therefore the acts specified in the second schedule to this act are hereby repealed to the extent specified in the third column of that schedule:

Provided that—

(1.) This repeal shall not affect—

(*a.*) Anything done or suffered before the commencement of this act under any enactment repealed by this act; or

(*b.*) Any right, duty, or liability acquired, imposed, or incurred by or under any enactment hereby repealed; or

(*c.*) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or

*Act of* 1879, *s.* 29.

(*d.*) The institution or prosecution to its termination of any legal proceeding, or other remedy for ascertaining, enforcing, or recovering any such liability, penalty, forfeiture, or punishment as aforesaid; or

(*e.*) The validity of any rule, order, or regulation made under any enactment hereby repealed; and

(2.) In particular, but without prejudice to the generality of the foregoing provisions, the repeal effected by this section shall not deprive any person who at the commencement of this act enjoys any compensation, pension, retiring annuity, superannuation allowance, or salary mentioned in any enactment repealed by this section of his right to receive the same compensation, pension, retiring annuity, superannuation allowance, or salary, or of any right he may have to receive any progressive or prospective increase of salary, or to obtain any promotion, or succession, or any pension, retiring annuity, or superannuation allowance, or affect or diminish any such right, or affect any right of appointment vested in any existing judge, or alter the duties, conditions, or restrictions attached to any office held by any existing officer; and

(3.) This repeal shall not revive any enactment, right, office, privilege, matter, or thing not in force or existing at the commencement of this act.

## SCHEDULES.

Section 14.

### FIRST SCHEDULE.

#### FIRST PART.

*Offices to be abolished as from commencement of Act.*

The offices of—
Record and Writ Clerk:
Master in the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice:
Associate in the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice.

#### SECOND PART.

*Offices to be abolished on next vacancy.*

The offices of—
Clerk of Enrolments:
Clerk of Petty Bag.

#### THIRD PART.

*Offices to be filled on vacancy by the Senior Master of the Supreme Court.*

The offices of—
Queen's Remembrancer:
Registrar of Certificates of Acknowledgments of Deeds by Married Women:
Registrar of Judgments.

## SECOND SCHEDULE. (a)

ENACTMENTS REPEALED.

A description or citation of a portion of an act in this schedule is inclusive of the word, section, or other part first or last mentioned or otherwise referred to as forming the beginning or as forming the end of the portion described in the description or citation.

| Year and Chapter. | Title or Short Title. | Extent of Repeal. |
|---|---|---|
| 29 Chas. 2, c. 5..... | An act for taking of affidavits in the country to be made use of in the Courts of King's Bench, Common Pleas, and Exchequer. | The whole act. |
| 53 Geo. 3, c. 24..... | An act to facilitate the administration of justice. | Section five. |
| 11 Geo. 4 & 1 Will. 4, c. 58. | An act for regulating the receipt and future appropriation of fees receivable by officers of the Superior Courts of Common Law. | The whole act. |
| 11 Geo. 4 & 1 Will. 4, c. 70. | An act for the more effectual administration of justice in England and Wales. | Section eleven. |
| 1 Will. 4, c. 7 ..... | An act for the more speedy judgment and execution in actions brought in his Majesty's Courts of Law at Westminster, and in the Courts of Common Pleas of the County Palatine of Lancaster; and for amending the law as to judgment on a cognovit actionem in cases of bankruptcy. | Section six. |
| 2 & 3 Will. 4, c. 39, s. 15. | An act for uniformity of process in personal actions in his Majesty's Court of Law at Westminster. | Section fifteen. |
| 3 & 4 Will. 4, c. 74 .. | An act for the abolition of fines and recoveries and for the substitution of more simple modes of assurance. | Section seventy-five and section eighty-nine to "lodged." |
| 3 & 4 Will. 4, c. 94 .. | An act for the regulation of the proceedings and practice of certain offices of the High Court of Chancery in England. | Section nine, section ten from "and it shall be lawful" to end of section, sections twenty-one, twenty-two, twenty-three, thirty-three and thirty-four and the schedule. |
| 3 & 4 Will. 4, c. 99 .. | An act for facilitating the appointment of sheriffs and the more effectual audit and passing of their accounts; and for the more speedy return and recovery of fines, issues, forfeited recognizances, penalties and deodands; and to abolish certain offices in the Court of Exchequer. | Section forty-six. |

(a) Section 29.

| Year and Chapter. | Title or Short Title. | Extent of Repeal. |
|---|---|---|
| 7 Will. 4 & 1 Vict. c. 30. | An act to abolish certain offices in the Superior Courts of Common Law, and to make provision for a more effective and uniform establishment of officers in those courts. | The whole act, except section nine, sections thirteen, fifteen, and nineteen, and twenty-eight (*a*). |
| 3 & 4 Vict. c. 66 .... | An act to make provision for the judge, registrar and marshal of the High Court of Admiralty of England. | The whole act, except sections one and seven. |
| 5 Vict. c. 5..... | An act to make further provisions for the administration of justice. | Sections eighteen, twenty-six, thirty-five, section thirty-eight from "and that each" to end of section, section thirty-nine, from the beginning to "general order direct; and that," sections forty-six and forty-seven, section forty-eight from "and that they" to end of section, and sections forty-nine and fifty-six. |
| 5 & 6 Vict. c. 86 .... | An act for abolishing certain offices on the revenue side of the Court of Exchequer in England, and for regulating the office of her Majesty's remembrancer in that court. | Sections two and four. |
| 5 & 6 Vict. c. 103 .... | An act for abolishing certain offices of the High Court of Chancery in England. | Section three from the beginning to "one thousand two hundred pounds per annum and," from "shall be entitled under this act" to "and taxing master," and from "and may be removed" to end of section. Sections four and five. Sections six and eleven, except so far as they relate to a taxing master, and sections nine, fourteen, eighteen, nineteen, thirty-one, and thirty-two. |
| 6 & 7 Vict. c. 20 .... | An act for abolishing certain offices on the crown side of the Court of Queen's Bench and for regulating the Crown Office. | The whole act, except sections six and eleven (*b*). |

(*a*) By sect. 9, moneys deposited in court by suitors are to be paid into the Bank of England, and drawn out by order of two or more masters. By sect. 13, appointments are to be made without pecuniary consideration. By sect. 15, masters, clerks, &c. are not to act as barristers or solicitors. By sect. 19, masters, clerks, &c. are not to take gratuities on pain of dismissal. Sect. 28 relates to the appointment of registrar of deeds for Middlesex.

(*b*) By sect. 6, officers may not practise as barristers, &c.; and by sect. 11, may not take gratuities on pain of dismissal.

| Year and Chapter. | Title or Short Title. | Extent of Repeal. |
|---|---|---|
| 6 & 7 Vict. c. 38 .... | An act to make further regulations for facilitating the hearing appeals and other matters by the Judicial Committee of the Privy Council. | Section thirteen. |
| 6 & 7 Vict. c. 67 .... | An act to enable parties to sue out and prosecute writs of error in certain cases upon the proceedings on writs of mandamus. | Section four. |
| 10 & 11 Vict. c. 96 .. | An act for better securing trust funds and for the relief of trustees. | Section four. |
| 12 & 13 Vict. c. 109 .. | The Petty Bag Office and Enrolment in Chancery Amendment Act, 1849. | Section forty-one. |
| 13 & 14 Vict. c. 35 .. | An act to diminish the delay and expense of proceedings in the High Court of Chancery in England. | Sections thirty to thirty-two. |
| 13 & 14 Vict. c. 75 .. | An act to regulate the receipt and amount of fees receivable by certain officers in the Court of Common Pleas. | The whole act. |
| 14 & 15 Vict. c. 83 .. | An act to improve the administration of justice in the Court of Chancery and in the Judicial Committee of the Privy Council. | Sections two and twelve, section twenty-one from "and shall be subject" to "by the said act," and sections twenty-two and twenty-three. |
| 15 & 16 Vict. c. 73 .. | An act to make provision for a permanent establishment of officers to perform the duties at nisi prius in the superior courts of common law, and for the payment of such officers and of the judges' clerks by salaries, and to abolish certain offices in those courts. | The whole act except section eleven, and section twenty-six (*c*). |
| 15 & 16 Vict. c. 76 .. | The Common Law Procedure Act, 1852. | Sections two hundred and twenty-four and two hundred and twenty-five. |
| 15 & 16 Vict. c. 80 .. | An act to abolish the office of master in ordinary of the High Court of Chancery, and to make provision for the more speedy and efficient despatch of business in the said court. | Sections five, twenty-five, thirty-eight, forty-four, forty-five, forty-six, fifty, fifty-four, fifty-five, and fifty-seven. |
| 15 & 16 Vict. c. 86 .. | An act to amend the practice and course of proceeding in the High Court of Chancery. | Sections sixty-three and sixty-four. |
| 15 & 16 Vict. c. 87 .. | An act for the relief of the suitors of the High Court of Chancery. | Sections one, twenty-three, twenty-nine, thirty-seven, thirty-eight, forty-six, and forty-seven. |

(*c*) By sect. 11, officers may not act as barristers or solicitors; and by sect. 26, there is a penalty for taking gratuities.

| Year and Chapter. | Title or Short Title. | Extent of Repeal. |
|---|---|---|
| 16 & 17 Vict. c. 22 .. | An act for making further provision for the execution of the office of examiner of the High Court of Chancery. | Section three. |
| 16 & 17 Vict. c. 70 .. | The Lunacy Regulation Act, 1853. | Sections thirteen and fourteen, and section fifteen from "and the present officers" to end of section. |
| 17 & 18 Vict. c. 78 .. | An act to appoint persons to administer oaths and to substitute stamps in lieu of fees, and for other purposes in the High Court of Admiralty of England. | Sections three, four, and twenty-two. |
| 17 & 18 Vict. c. 125 .. | The Common Law Procedure Act, 1854. | Sections ninety-seven and ninety-eight. |
| 18 & 19 Vict. c. 126 .. | An act for diminishing expense and delay in the administration of justice in certain cases. | Section twenty. |
| 18 & 19 Vict. c. 134 .. | An act to make further provision for the more speedy and efficient despatch of business in the High Court of Chancery, and to vest in the Lord Chancellor the ground and buildings of the said court situate in Southampton Buildings, Chancery Lane, with powers of leasing and sale thereof. | Sections five, six, eight, and twelve. |
| 19 & 20 Vict. c. 97 .. | The Mercantile Law Amendment Act, 1856. | Section fifteen so far as it incorporates any enactment repealed by this act. |
| 20 & 21 Vict. c. 77 .. | An act to amend the law relating to probates and letters of administration in England. | Sections eight, fourteen, and eighteen, section nineteen from "subject to be removed" to end of section, and sections one hundred and two to one hundred and six and one hundred and eleven to one hundred and thirteen. |
| 20 & 21 Vict. c. 85 .. | An act to amend the law relating to divorce and matrimonial causes in England. | Sections fourteen, sixty-two, and sixty-eight. |
| 21 & 22 Vict. c. 27 .. | The Chancery Amendment Act, 1858. | Section eleven. |
| 22 & 23 Vict. c. 21 .. | An act to regulate the office of Queen's remembrancer and to amend the practice and procedure on the revenue side of the Court of Exchequer. | Sections one to five, and section forty-one. |
| 23 & 24 Vict. c. 126 .. | The Common Law Procedure Act, 1860. | Sections thirty-seven and thirty-eight. |
| 23 & 24 Vict. c. 128 .. | An act to enable the Lord Chancellor and judges of the Courts of Chancery to carry into effect the recommendations and suggestions of the Chancery Evidence Commissioners by general rules and orders of the court. | The whole act. |

| Year and Chapter. | Title or Short Title. | Extent of Repeal. |
|---|---|---|
| 23 & 24 Vict. c. 149 .. | An act to make better provision for the relief of prisoners in contempt of the High Court of Chancery, and pauper defendants, and for the more efficient despatch of business in the said court. | Sections twelve and fourteen. |
| 25 & 26 Vict. c. 96 .. | An act to render tenable during good behaviour the office of the officer of the Court of Common Pleas by whom the certificates of acknowledgment of deeds of married women are filed of record (*a*). | The whole act. |
| 28 & 29 Vict. c. 45 .. | The Common Law Courts (Fees) Act, 1865. | The whole act. |
| 29 & 30 Vict. c. 68 .. | The Superannuation Act, 1866 .. | The whole act, so far as it applies to officers of the Supreme Court or to officers in lunacy. |
| 29 & 30 Vict. c. 101 .. | The Common Law Courts (Fees and Salaries) Act, 1866. | The whole act. |
| 30 & 31 Vict. c. 87 .. | The Court of Chancery (Officers) Act, 1867. | Section eight from "and shall be subject" to "same act," and sections nine and ten. |
| 32 & 33 Vict. c. 91 .. | The Courts of Justice (Salaries and Funds) Act, 1869. | Sections sixteen to twenty-eight. |
| 36 & 37 Vict. c. 66 .. | The Supreme Court of Judicature Act, 1873. | Section eighty-five. |
| 40 & 41 Vict. c. 18 .. | The Settled Estates Act, 1877 .... | Section forty-two from "so far as relates to proceedings in England" to the first "specified therein, and." |

(*a*) The office is abolished by Sched. I. Part 3 of this act.

# RULES OF THE SUPREME COURT. (a)

[NOTE.—*Where no other provision is made by the Act or these Rules the present Procedure and Practice remain in force* (b).

## ORDER I.

### FORM AND COMMENCEMENT OF ACTION.

Actions.

1. All actions which have hitherto been commenced by writ in the superior courts of common law at Westminster, or in the Court of Common Pleas at Lancaster, or in the Court of Pleas at Durham, and all suits which have hitherto been

(a) The rules here printed (which in accordance with R. S. C., Dec. 1875, r. 1, p. 555, are cited as Rules of the Supreme Court, and are referred to in this book as R. S. C.) are a consolidation of the original rules scheduled to the Act of 1875, with the new rules issued from time to time under sect. 17 of the Act of 1875 (p. 77), and sect. 17 of the Act of 1876 (p. 102), all amendments being printed in their proper places. The various issues of new rules bear date Dec. 1875; Feb. 1876; June, 1876; Dec. 1876; May, 1877; June, 1877; Nov. 1878; March, 1879; Dec. 1879; April, 1880, and May, 1880. The original rules of court scheduled to the Act of 1875 derived their force from sect. 16 of that act, p. 76. They were a consolidation of the fifty-eight rules in the now repealed schedule of the Act of 1873, with those prepared by the judges under sect. 68 of that act, also repealed.

(b) Where no rule of practice is laid down by the rules, and the Chancery practice is at variance with the common law, the most convenient practice is to prevail. (*Newbiggin-by-the-Sea Gas Company* v. *Armstrong* (C. A.), 13 Ch. D. 310; 49 L. J., Ch. 231; 41 L. T. 637; 28 W. R. 217.) The Civil Procedure Acts Repeal Act, 1879 (42 & 43 Vict. c. 59), expressly repeals a large number of spent or obsolete enactments—the Statute of Gloucester (6 Edw. 1, c. 1) amongst the number—which relate to civil procedure, but both that act and the Statute Law Revision Act of 1875, which comprises the principal Equity and Common Law Procedure Acts (*e. g.* Turner's Act, the Chancery Amendment Act of 1852, the Common Law Procedure Acts of 1852, 1854 and 1860), and repeals formal portions of some of them only, still leaves the vast body of the old procedure theoretically unrepealed, so that it may be resorted to upon any point on which the new code is silent. See further, as to maintenance of old procedure, Act of 1873, sect. 23 (p. 15), sect. 76 (p. 51), and sect. 21 of the Act of 1875 (p. 79). Note, however, the displacement of the old procedure by Ord. II. r. 6*a* (p. 125), by Ord. XXXIV. r. 7 (p. 199), and by Ord. XLVI. r. 2*a* (p. 234).

commenced by bill or information in the High Court of Chancery, or by a cause in rem or in personam in the High Court of Admiralty, or by citation or otherwise in the Court of Probate, shall be instituted in the High Court of Justice by a proceeding to be called an action. *Ord.* I.

An "action," under the Judicature Acts, assumes an entirely new aspect. At common law, from which the word is taken, an action determined a single dispute between two parties. A "suit" in equity had a more extended application, as it was frequently employed to adjust numerous conflicting interests. The present action includes both these meanings, and also extends to the adjustment of questions arising between three or more sets of parties. Divorce proceedings, it is to be observed, are not called "actions."

2. With respect to interpleader, the procedure and practice now used by courts of common law under the Interpleader Acts, 1 & 2 Will. 4, c. 58, and 23 & 24 Vict. c. 126, shall apply to all actions and all the divisions of the High Court of Justice, and the application by a defendant shall be made at any time after being served with a writ of summons and before delivering a defence. Interpleader.

See these acts, "Incorporated Statutes," II. and notes, p. 486. Interpleader is by this rule applied to "all actions." It was formerly confined to assumpsit, debt, detinue, or trover, the application by a defendant having to be made "after declaration and before plea." The proceeding originated in the bill of interpleader, as to which see Dan. Ch. Pr., pp. 1412—1418; but an "action" of interpleader now seems unnecessary, and is, perhaps, precluded by implication in this section. Effect was given to equitable claims in interpleader by courts of law. (See *Duncan* v. *Cashin*, L. R., 10 C. P. 554; 44 L. J., C. P. 225; 32 L. T. 497; *Engleback* v. *Nixon*, L. R., 10 C. P. 645; 32 L. T. 831.)

*Appeal.*] Notwithstanding sect. 50 of Judicature Act, 1873, there is no appeal from a summary decision at chambers in an interpleader summons under sects. 14, 17 of the Common Law Procedure Act, 1860. (*Dodds* v. *Shepherd*, 1 Ex. D. 75; 45 L. J., Ex. 457; 34 L. T. 358.) There is an appeal from judgment entered after the trial of an interpleader issue. (*Witt* v. *Parker*, 46 L. J., Q. B. 450.) The order made upon an interpleader issue is an interlocutory order, and twenty-one days are the limit for appealing against it. (*M'Andrew* v. *Barker*, 7 Ch. D. 701; 47 L. J., Ch. 340.)

*Mode of Trial.*] An interpleader issue directed in the ordinary way must be tried with a jury. (*Hamlyn* v. *Betteley*, 6 C. P. D. 63; 50 L. J., Q. B. 1.)

3. All other proceedings in and applications to the High Court may, subject to these rules, be taken and made in the same manner as they would have been taken and made in any court in which any proceeding or application of the like kind could have been taken or made if the act had not been passed. Proceedings other than actions and interpleader.

The proceedings referred to in this rule are proceedings in divorce, which will still be conducted according to the rules of the old Divorce Court (see the acts and rules, "Additional Acts," p. 546), and those proceedings which come under the term "matters" in the interpretation clause (sect. 100) of the Act of 1873. Revenue proceedings, proceedings

*Ords.* I., II.

on the Crown side of the Queen's Bench Division, and criminal proceedings generally, are in general excepted from the operation of the rules by Ord. LXII., p. 272, *post*.

## ORDER II.

### WRIT OF SUMMONS AND PROCEDURE, &c.

Commencement of actions by writ.

1. Every action in the High Court shall be commenced by a writ of summons, which shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action, and which shall specify the division of the High Court to which it is intended that the action should be assigned.

This rule is founded, so far as regards the writ, on the common law practice, suits in equity having been (since 1852) commenced by bill without writ of subpœna. For forms of writs, see pp. 277 *et seq.*

*Administration Action.*] As to title of writ of summons in an administration action, see directions of the Record and Writ Clerks, *post*.

Costs by use of prolix forms.

2. Any costs occasioned by the use of any more prolix or other forms of writs, and of indorsements thereon, than the forms hereinafter prescribed, shall be borne by the party using the same, unless the court shall otherwise direct.

Form of writ.
* Page 277.

3. The writ of summons for the commencement of an action shall, except in the cases in which any different form is hereinafter provided, be in Form No. 1* in Part I. of Appendix (A.) hereto, with such variations as circumstances may require.

Alteration of forms.

3*a*. Forms 2 and 3 in Part I. of Appendix (A.) to the "Rules of the Supreme Court" shall be read as if the words "by leave of the court or a judge" were not therein (*c*).

The words directed to be omitted qualified the notice that the plaintiff might proceed if the defendant did not appear. The original form was copied by mistake from the Common Law Procedure Act, 1852, which required leave after writ instead of before, as now. (See *Scott* v. *The Royal Wax Candle Co.*, 1 Q. B. D. 404; 45 L. J., Q. B. 586; 34 L. T. 683; 24 W. R. 668; and *Bacon* v. *Turner*, 1 Ch. D. 275; 34 L. T. 349; 24 W. R. 637.)

Writ for service out of jurisdiction, by leave.

4. No writ of summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of a court or judge.

For service out of jurisdiction, see Ord. XI., p. 139.

Leave to issue and leave to serve under Ord. XI. r. 1, may be combined in one order. (*Traill* v. *Porter*, 1 Ir. Ch. D. 60.)

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(*c*) Inserted by R. S. C., June, 1876, r. 2, p. 560.

An affidavit is required in support of the summons under this rule; it should be intituled in the action and also "In the matter of the Judicature Acts." (*Young* v. *Brassey*, 1 Ch. D. 277; 45 L. J., Ch. 142; 24 W. R. 110.) A master or district registrar cannot act under this rule. Ord. LIV., Rule 2*a*. A defendant cannot plead that a writ was an improper one to serve out of the jurisdiction when leave has been given to serve it. (*Preston* v. *Lamont*, 1 Ex. D. 361; 45 L. J., Ex. 797; 35 L. T. 341; 24 W. R. 928.)

Form of writ.

5. A writ of summons to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be in Form No. 2* in Part I. of Appendix (A.) hereto, with such variations as circumstances may require. Such notice shall be in Form No. 3† in the same part, with such variations as circumstances may require.

* Page 280.

† Page 283.

See Rule 3*a*, *supra*.

6. [*With respect to actions upon a bill of exchange or promissory note, commenced within six months after the same shall have become due and payable, the procedure under the Bills of Exchange Act*, 18 & 19 *Vict. c.* 67, *shall continue to be used.* —Annulled by R. S. C., April, 1880, r. 3.]

Special procedure under Bills of Exchange Act abolished.

6*a*. Order II., Rule 6, is hereby annulled, and no writ shall hereafter be issued under the Summary Procedure on Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67) (*d*).

Ord. XIV. was considered sufficient to answer the purposes of the Bills of Exchange Act. See that act, commonly called "Keating's Act," and the cases thereon in the 2nd edition of this work, p. 470. The act was based on the same principle as Ord. XIV., the main differences between its procedure and that of Ord. XIV. being that the writ was a twelve-day writ, and the defendant had to apply for leave to appear.

Form of Admiralty writ.

‡ Page 284.

7. The writ of summons in every admiralty action in rem shall be in Form No. 4‡ of Part I. of Appendix (A.) hereto, with such variations as circumstances may require.

New form.

7*a*. Form A. in the Appendix to these Rules shall be substituted for the form referred to in Order II., Rule 7, of the "Rules of the Supreme Court" (*e*).

Date, &c. of writ.

8. Every writ of summons, and also every other writ, shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Lord Chancellor, or if the office of Lord Chancellor shall be vacant, in the name of the Lord Chief Justice of England.

By the C. L. P. Act, 1852, sect. 5, the writ was tested in the name of a chief or senior judge; and Ch. Am. Act, 1852, sect. 3, and sched., by which the bill in Chancery was tested in the name of the Crown.

(*d*) Added by R. S. C., April, 1880, r. 3, p. 573.

(*e*) Added by R. S. C., Dec. 1875, r. 2, p. 555.

*Ord.* III.

## ORDER III.

### INDORSEMENTS OF CLAIM.

Time of indorsement.

1. The indorsement of claim shall be made on every writ of summons before it is issued.

Contents of indorsement.

Leave to amend.

2. In the indorsement required by Order II., Rule 1, it shall not be essential to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled. The plaintiff may by leave of the court or judge amend such indorsement so as to extend it to any other cause of action or any additional remedy or relief.

When the obtaining of an injunction or receiver is a substantial part of the action, the claim should be indorsed accordingly. (*Colebourne* v. *Colebourne*, 1 Ch. D. 690; 24 W. R. 235.)

Forms of indorsement.

* Page 287.

3. The indorsement of claim may be to the effect of such of the forms in Part II.* of Appendix (A.) hereto as shall be applicable to the case, or if none be found applicable, then such other similarly concise form as the nature of the case may require.

Indorsing representative capacity.

† Page 296.

4. If the plaintiff sues or the defendant or any of the defendants is sued in a representative capacity, the indorsement shall show, in manner appearing by the statement in Appendix (A.) hereto, Part II. Sect. 8,† or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued.

Indorsement in probate actions.

5. In probate actions the indorsement shall show whether the plaintiff claims as creditor, executor, administrator, residuary legatee, legatee, next of kin, heir-at-law, devisee, or in any and what other character.

Special indorsement of debt or liquidated demand.

6. In all actions where the plaintiff seeks merely to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising upon a contract, express or implied, as, for instance, on a bill of exchange, promissory note, cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt, or on a guaranty, whether under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, cheque, or note, or on a trust, the writ of summons may be specially indorsed with the particulars of the amount sought to be recovered, after giving credit for any payment or set-off.

This rule is taken from the C. L. P. Act of 1852, sect. 25, but is more

extensive than that section, in being applicable to cases where the defendant does not reside within the jurisdiction, and to cases of trust, and also in allowing the plaintiff to give credit for set-off. The special indorsement may be used as a "statement of claim," unless a judge orders otherwise. (Ord. XXI., Rule 4.) But its main object is to enable the plaintiff to sign final judgment on default of appearance under Ord. XIII., Rule 3, p. 146, and also to call on the defendant to show cause why judgment should not be signed under Ord. XIV., p. 149.

The words "to goods" followed by dates and amounts is a good special indorsement (*Smith* v. *Wilson* (C. A.), 4 C. P. D. 392; 5 C. P. D. 25; 49 L. J., C. P. 96; 41 L. T. 433; 28 W. R. 57), so is "balance due for purchase of shares between certain dates, an account of which has been rendered (*Aston* v. *Hurwitz* (C. A.), 41 L. T. 521); but "contribution to payment on bills on which plaintiff and defendant were jointly liable," without dates, is not enough (*Walker* v. *Hicks*, 3 Q. B. D. 8; 47 L. J., Q. B. 27; 37 L. T. 529; 26 W. R. 113). Similarly in *Parpaite Freres* v. *Dickinson* (38 L. T. 178; 26 W. R. 479) the indorsement was held insufficient for want of dates.

*Forms.*] Forms of special indorsements are given in Appendix (A.), Part II., Sect. 7.

General indorsement of debt or liquidated demand.

7. Wherever the plaintiff's claim is for a debt or liquidated demand only, the indorsement, beside stating the nature of the claim, shall state the amount claimed for debt, or in respect of such demand, and for costs respectively, and shall further state, that upon payment thereof within four days after service, or in case of a writ not for service within the jurisdiction within the time allowed for appearance, further proceedings will be stayed. Such statement may be in the form in Appendix (A.) hereto, Part II., Sect. 3.* The defendant may, notwithstanding such payment, have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the costs of taxation.

* Page 290.

This rule is taken from C. L. P. Act, 1852, sect. 8. It applies to the same kind of claims as the preceding rule, but, that being for the plaintiff's benefit, is permissive, and this, being for the defendant's benefit, is compulsory. The indorsement under this rule is general, that is, for so much, without giving particulars.

Where the plaintiff takes the full amount indorsed after the four days, the defendant may tax under this rule. (*Hoole* v. *Earnshaw*, 39 L. T. 409.)

Indorsement of claim for account.

8. In all cases of ordinary account, as, for instance, in the case of a partnership or executorship or ordinary trust account, where the plaintiff, in the first instance, desires to have an account taken, the writ of summons shall be indorsed with a claim that such account be taken.

See further on this subject, Ord. XV., p. 151.

## ORDER IV.

### INDORSEMENT OF ADDRESS.

Where plaintiff sues by solicitor.

1. The solicitor of a plaintiff suing by a solicitor shall indorse upon every writ of summons and notice in lieu of

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service of a writ of summons the address of the plaintiff, and also his own name or firm and place of business, and also, if his place of business shall be more than three miles from Temple Bar, another proper place, to be called his address for service, which shall not be more than three miles from Temple Bar, where writs, notices, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him. And where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

Agency.

This rule is substituted for Ch. C. O. III., Rule 2, and C. L. P. Act, 1852, sect. 6. The former required the place of business of the solicitor to be given; the latter his place of abode only. Neither of them required the address of the plaintiff, which it now becomes necessary to state. As to notice in lieu of service, see Ord. IX., Rule 2, p. 135.

Where plaintiff sues in person.

2. A plaintiff suing in person shall indorse upon every writ of summons and notice in lieu of service of a writ of summons his place of residence and occupation, and also, if his place of residence shall be more than three miles from Temple Bar, another proper place, to be called his address for service, which shall not be more than three miles from Temple Bar, where writs, notices, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him.

The above two rules are to apply to all cases in which the writ of summons is issued out of the London office, *or out of a district registry where the defendant has the option of entering an appearance either in the district registry or the London office.*

This rule is based on Ch. C. O. III., Rule 5, which, however, did not, any more than the corresponding enactment of the C. L. P. Act, 1852, sect. 6, require the occupation to be stated.

The italicised words appear to be impliedly repealed by the next rule (2*a*).

Town writs, indorsement of.

2*a*. Notwithstanding anything to the contrary contained in Order IV. of "The Rules of the Supreme Court," Rules 1 and 2 of such order shall only apply where the writ of summons is issued out of the London office (*f*).

3. [*Indorsement of address where writ issued out of district registry.*—Annulled, R. S. C., Feb. 1876, Rule 3.]

Where writ out of district registry.

3*a*. In all cases where a writ of summons is issued out of a district registry the solicitor shall give on the writ the address of the plaintiff, and his own name or firm and his place of

(*f*) Added by R. S. C., Feb. 1876, r. 2, p. 558.

business, which shall, if his place of business be within the district of the registry, be an address for service, and if such place be not within the district, he shall add an address for service within the district, and where the defendant does not reside within the district, he shall add a further address for service, which shall not be more than three miles from Temple Bar; and where the solicitor issuing the writ is only agent for another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor. Where the plaintiff sues in person, he shall give on the writ his place of residence and occupation, which shall, if his place of residence be within the district, be an address for service, and if such place be not within the district, he shall add an address for service within the district, and, where the defendant does not reside within the district, he shall add a further address for service, which shall not be more than three miles from Temple Bar (*g*).

"Of Hereford" was held by the Court of Appeal to be a sufficient solicitor's "place of business." (*Smith* v. *Dobbin*, 3 Ex. D. 338; 47 L. J., Ex. 65; 37 L. T. 777; 26 W. R. 59.)

## ORDER V.

### ISSUE OF WRITS OF SUMMONS.

#### 1. *Place of Issue.*

Plaintiff may issue writ out of any district registry.

1. In any action other than a probate action, the plaintiff, wherever resident, may issue a writ of summons out of the registry of any district.

See, as to district registries, Act of 1873, sect. 60, p. 48, and order in council thereunder, p. 428, and also Ord. XXXV., p. 199. The result of this and the following rules is, that it is in the first instance optional with the plaintiff to proceed in a district registry or not; but that if the plaintiff chooses to proceed in a district registry, it is optional with the defendant to appear there or not, unless he reside or carry on business within the district. In either of these cases an appearance in the district registry is compulsory. See Ord. XII., Rules 2, 3, p. 141.

Issue out of Central Office.

1*a*. Every writ of summons not issued out of a district registry shall be issued out of the Central Office (*h*).

What writ must state if defendant not

2. In all cases where a defendant neither resides nor carries on business within the district out of the registry whereof a

(*g*) Substituted for Rule 3 (which made no provision for the case of a defendant residing out of the district from the registry of which the writ was issued) by R. S. C., Feb. 1876, r. 3, p. 558.

(*h*) Added by R. S. C., April, 1880, r. 4, p. 573, in pursuance of the Judicature (Officers) Act, 1879, p. 108.

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resident within district.

writ of summons is issued, there shall be a statement on the face of the writ of summons that such defendant may cause an appearance to be entered at his option either at the district registry or the London office, or a statement to the like effect.

What if defendant resident.

3. In all cases where a defendant resides or carries on business within the district, and a writ of summons is issued out of the district registry, there shall be a statement on the face of the writ of summons that the defendant do cause an appearance to be entered at the district registry, or to the like effect.

2. *Option to choose Division in certain Cases.*

Choice of division in Admiralty actions.

4. Subject to the power of transfer, every person by whom any cause or matter may be commenced in the High Court of Justice which would have been within the non-exclusive cognizance of the High Court of Admiralty if the said act had not passed shall assign such cause or matter to any one of the divisions of the said High Court, including the Probate, Divorce, and Admiralty Division, as he may think fit, by marking the document by which the same is commenced with the name of the division, and giving notice thereof to the proper officer of the court. If so marked for the Chancery Division the same shall be assigned to one of the judges of such division by marking the same with the name of such of the said judges as the plaintiff or petitioner (subject to such power of transfer) may think fit.

As to the power of transfer, see Ord. LI., p. 239. This rule is supplementary to sect. 11 of the Act of 1875. By sect. 34 of the Act of 1873, certain business is assigned to particular divisions of the High Court. By the effect of the general power given by that section it was open to the plaintiff to assign to the Probate, Divorce, and Admiralty Division any cause not specifically assigned to any other division by sect. 34 of the Act of 1873. The 3rd sub-sect. of sect. 11 of the Act of 1875 confines this power to cases where the plaintiff would have been entitled to sue in one of the three corresponding courts. In order to clear up any doubt as to Admiralty causes, which might have been brought either in the Admiralty or a common law court, this rule expressly extends the plaintiff's right to assign such causes to any division of the High Court as well as the division in question. Actions within the exclusive cognizance of the former Court of Admiralty are assigned to the Probate, &c. Division by sect. 34 of the Act of 1873, p. 34. The result is to give this division the same jurisdiction as the old courts.

Marking cause with name of judge.

4*a*. Subject to the power of transfer, and subject also to the power of the Lord Chancellor by order from time to time otherwise to direct, every cause or matter which shall be commenced in the Chancery Division of the High Court shall be assigned to one of the judges thereof by marking the same with the name of such of the same judges as the plaintiff or petitioner may in his option think fit (*i*).

The following Order was issued on 19th June, 1877: "I, the Right

(*i*) Added by R. S. C., June, 1877, p. 566.

Hon. Hugh MacCalmont Baron Cairns, Lord High Chancellor of Great Britain, do hereby order and direct as follows:—

"1. Each of the several causes which have been or shall be transferred to Mr. Justice Fry shall, until further order, be deemed to have been transferred to him for the purpose only of trial or of hearing.

"2. No cause or matter shall, until further order, be assigned to the said Mr. Justice Fry, by the same being marked by the plaintiff or petitioner with the name of the said Mr. Justice Fry.—CAIRNS, C."

Transfer to the division of the judge who tried the cause.

4*a*. If, in any action commenced and pending in any one of the Queen's Bench, *Common Pleas, or Exchequer Divisions* of the High Court, the trial shall take place before a judge of another of the said divisions, the cause shall from that time be transferred to the division of which such judge is a member (*k*).

These three divisions were consolidated into one by order in council, p. 438, so that the rule is practically obsolete. Where an action in the Chancery Division was ordered by a Chancery judge to be tried by a judge of a Common Law Divisipn a motion for a new trial was made to a Chancery judge. (*Jenkins* v. *Morris* (C. A.), 14 Ch. D. 674; 49 L. J., Ch. 392.) But where there was no order the division to which the judge who tried belongs had to be moved. (*Jones* v. *Baxter*, 5 Ex. D. 275.)

### 3. *Generally.*

Preparation of writs.

5. Writs of summons shall be prepared by the plaintiff or his solicitor, and shall be written or printed, or partly written and partly printed, on paper of the same description as hereby directed in the case of proceedings directed to be printed.

Seal of writ.

6. Every writ of summons shall be sealed by the proper officer, and shall thereupon be deemed to be issued.

Copy of writ left in office.

7. The plaintiff or his solicitor shall, on presenting any writ of summons for sealing, leave with the officer a copy, written or printed, or partly written and partly printed, on paper of the description aforesaid, of such writ, and all the indorsements thereon, and such copy shall be signed by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person.

Entered in cause book.

8. The officer receiving such copy shall file the same, and an entry of the filing thereof shall be made in a book to be called the cause book, which is to be kept in the manner in which cause books have heretofore been kept by the clerks of records and writs in the Court of Chancery, and the action shall be distinguished by the date of the year, a letter, and a number, in the manner in which causes are now distinguished in such last-mentioned cause books. And when such action shall be commenced in a district registry, it shall be further distinguished by the name of such registry (*l*).

Distinguished by name of district registry.

(*k*) Added by R. S. C., March, 1879, r. 3, p. 568, although "4*a*." was occupied as above.

(*l*) The last sentence was added by R. S. C., June, 1876, r. 3, p. 560.

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Notice to officer of assignment of action.

9. Notice to the proper officer of the assignment of an action to any division of the court under sect. 11 of the Supreme Court of Judicature Act, 1875, or under Rule 4 of this Order, shall be sufficiently given by leaving with him the copy of the writ of summons.

4. *In particular Actions.*

Affidavit before probate writ.

10. The issue of a writ of summons in probate actions shall be preceded by the filing of an affidavit made by the plaintiff or one of the plaintiffs in verification of the indorsement on the writ.

Before Admiralty writ.

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11. In Admiralty actions in rem a warrant for the arrest of property according to the Form A.* in the Appendix to these Rules, may be issued at the instance either of the plaintiff or of the defendant, at any time after the writ of summons has issued, but no warrant of arrest shall be issued until an affidavit by the party or his agent has been filed, and the following provisions complied with (*m*) :—

(*a.*) The affidavit shall state the name and description of the party on whose behalf the action is instituted, the nature of the claim, the name and nature of the property to be arrested, and that the claim has not been satisfied.

Wages.

(*b.*) In an action of wages the affidavit shall state the national character of the vessel proceeded against; and if against a foreign vessel that notice of the institution of the action has been given to the consul of the State to which the vessel belongs, if there be one resident in London [*a copy of the notice shall be annexed to the affidavit*].

Bottomry.

(*c.*) In an action of bottomry, the bottomry bond, and if in a foreign language also a notarial translation thereof, shall be produced for the inspection and perusal of the registrar, and a copy of the bond, or of the translation thereof, certified to be correct, shall be annexed to the affidavit.

Salvage.

(*d.*) In an action of distribution of salvage the affidavit shall state the amount of salvage money awarded or agreed to be accepted, and the name, address, and description of the party holding the same.

Dispensing with particulars by judge.

(*e.*) The court or judge may in any case, if he think fit, allow the writ of summons to issue although the affidavit may not contain all the required particulars. In a wages cause he may also waive the service of the notice, and in a cause of bottomry the production of the bond.

[12. *Caveat in case of a second Admiralty action.* Annulled, R. S. C., Dec. 1875, Rule 4, p. 556.]

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(*m*) This paragraph was substituted for the former first paragraph of Rule 11 by R. S. C., Feb. 1876, r. 4, p. 558, in amendment of the former substituted rule, R. S. C., Dec. 1875, r. 3. The original rule required the affidavit to be filed prior to the issue of the writ.

## ORDER VI.

### Concurrent Writs.

Issue of concurrent writ within 12 months.

1. The plaintiff in any action may, at the time of or at any time during twelve months after the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear teste of the same day as the original writ, and to be marked with a seal bearing the word "concurrent," and the date of issuing the concurrent writ; and such seal shall be impressed upon the writ by the proper officer: Provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force.

This rule is based on sect. 9 of the C. L. P. Act, 1852, twelve months being substituted for six. It was held in *Coles* v. *Sherrard* (11 Ex. 482; 25 L. J., Ex. 59),,that under the C. L. P. Act, 1852, a concurrent writ could not be issued upon a renewed writ after the six months had elapsed from the issuing of the orginal writ; but now see Ord. LVII., Rule 1, as to extension of time, and *Re Jones, Eyre* v. *Cox*, 46 L. J., Ch. 316.

When a writ has been lost, the court has no power to issue a concurrent writ. (*Davies* v. *Garland*, 1 Q. B. D. 250; 33 L. T. 727; 24 W. R. 252.)

Service out of jurisdiction.

2. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service, or whereof notice in lieu of service is to be given, out of the jurisdiction; and a writ for service, or whereof notice in lieu of service is to be given, out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction.

This rule is based on sect. 22 of the C. L. P. Act, 1852.

For an example of a notice in lieu of service concurrent with an ordinary writ, see *Beddington* v. *Beddington*, 1 P. D. 426; 45 L. J., P. D. & A. 44; 34 L. T. 366; 24 W. R. 348.

## ORDER VII.

### Disclosure by Solicitors and Plaintiffs.

Declaration by solicitor whether writ issued with his authority.

1. Every solicitor whose name shall be indorsed on any writ of summons shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith whether such writ has been issued by him or with his authority or privity; and if such solicitor shall declare that the writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the court or a judge.

This rule is taken from sect. 7 of the C. L. P. Act, 1852, which con-

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tained also a provision for disclosure of the place of abode of the plaintiff, whose address must now, by Ord. IV., Rule 1, p. 127, be given in any case.

Declaration by partners of names of firm.

2. When a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitors shall, on demand in writing by or on behalf of any defendant, declare forthwith the names and places of residence of all the persons constituting the firm. And if the plaintiffs or their solicitor shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the court or a judge may direct. And when the names of the partners are so declared, the action shall proceed in the same manner, and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the writ. But all proceedings shall, nevertheless, continue in the name of the firm.

The power of suing in the name of a firm is given by Ord. XVI., Rule 10, p. 156.

## ORDER VIII.

### RENEWAL OF WRIT.

Writ to be in force for 12 months only.

1. No original writ of summons shall be in force for more than twelve months from the day of the date thereof, including the day of such date; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the twelve months, apply to a judge, or the district registrar, for leave to renew the writ; and the judge or registrar, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for six months from the date of such renewal, and so from time to time during the currency of the renewed writ. And the writ shall in such case be renewed by being marked with a seal bearing the date of the day, month, and year of such renewal; such seal to be provided and kept for that purpose at the proper office, and to be impressed upon the writ by the proper officer, upon delivery to him by the plaintiff or his solicitor of a memorandum in Form No. 5 * in Appendix (A.) Part I.; and a writ of summons so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons.

Renewal of writ for six months by order of judge or district registrar.

* Page 286.

Substituted for C. L. P. Act, 1852, sect. 11, by which the original writ was not to "be in force for more than six months." The months are calendar months, Ord. LVII., Rule 1, p. 253.

Where a writ has been amended, the twelve months run from the date of the writ, not of the amendment; and the twelve months may be extended under Ord. LVII., Rule 6 (*Re Jones, Eyre* v. *Cox*, 46 L. J., Ch. 316; 25 W. R. 303), but not where the claim would, in the absence of renewal, be barred by the Statute of Limitation. (*Doyle* v. *Kaufman*, 3 Q. B. D. 7; 47 L. J., Q. B. 26.)

Evidence of renewal.

2. The production of a writ of summons purporting to be marked with the seal of the court, showing the same to have been renewed in manner aforesaid, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes.

Identical with C. L. P. Act, 1852, sect. 13.

## ORDER IX.

### Service of Writ of Summons.

#### 1. *Mode of Service.*

Agreement of solicitor to accept service.

1. No service of writ shall be required when the defendant, by his solicitor, agrees to accept service, and enters an appearance.

If the defendant's solicitor agrees to accept service, but does not enter an appearance, he is liable to an attachment by Ord. XII., Rule 14, p. 144.

Personal service.

Substituted service.

Notice for service.

2. When service is required the writ shall, wherever it is practicable, be served in the manner in which personal service is now made, but if it be made to appear to the court or to a judge that the plaintiff is from any cause unable to effect prompt personal service, the court or judge may make such order for substituted or other service, or for the substitution of notice for service, as may seem just.

Personal service is effected by tendering a copy of the writ to the defendant and producing the original if required by him. In default of personal service this rule, in place of the order to enter an appearance in Chancery and the order to proceed at common law, gives the judge, on sufficient cause shown, full power to order that any expedient for bringing the writ to the defendant's notice shall be adopted as an equivalent. The term substituted service is generally employed to mean service on some person in place of the defendant, such as an agent or manager. The power to order notice in lieu of service suggests an advertisement in a newspaper, as sometimes employed in the Court of Chancery before the act. (See Ch. C. O. X., 2.)

An amended writ must be served like an original writ. (*The Cassiopeia* (C. A.), 4 P. D. 188; 48 L. J., P. D. & A. 39; 40 L. T. 869; 27 W. R. 703.)

Substituted service on the ambassador of a foreign sovereign who is named as a defendant will not be allowed. (*Stewart* v. *The Bank of England*, W. N. 1876, p. 263.) Nor can substituted service be allowed when

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a colonial government is defendant, as not being a corporation it cannot be served. (*Sloman* v. *The Government of New Zealand* (C. A.), 1 C. P. D. 563; 46 L. J., Q. B. 183; 35 L. T. 454; 25 W. R. 86.)

Where an order had been made allowing substituted service on the defendants' solicitors in a previous action on the same subject, the order was afterwards set aside on its appearing that the solicitors had ceased to act for the defendants. (*The Pommerania*, 4 P. D. 195; 48 L. J., P. D. & A. 55; 39 L. T. 642.)

Where judgment is signed on substituted service, the defendant, although he has had no notice of the action, can only be allowed to defend as a matter of grace. (*Watt* v. *Barnett*, 3 Q. B. D. 363; 38 L. T. 903; 26 W. R. 745.)

Substituted service has been allowed in various forms, *e. g.*, upon the defendant's solicitor, accompanied by posting a copy of the writ to the last known address of the party (*Dymond* v. *Croft* (C. A.), 45 L. J., Ch. 604; 34 L. T. 786; 24 W. R. 842): by leaving the notice at the defendant's premises, and advertising (*Cook* v. *Dey*, 2 Ch. D. 218; 45 L. J. Ch. 611; *Rafael* v. *Ongley*, 34 L. T. 124; *Whiteley* v. *Honeywell*, 24 W. R. 851): by leaving a copy of the writ at the residence and place of business of the defendant, and posting it to him (*Capes* v. *Brewer*, 24 W. R. 40): by advertising and leaving a copy of the writ at houses sought to be recovered (*Crane* v. *Jullion*, L. R., 2 Ch. 220; 24 W. R. 691); and by advertising only. (*Hartley* v. *Dilke*, 35 L. T. 706.) See also *Wolverhampton, &c. Banking Co.* v. *Bond*, 43 L. T. 721.

### 2. *On particular Defendant.*

Service on husband and wife.

3. When husband and wife are both defendants to the action, service on the husband shall be deemed good service on the wife, but the court or a judge may order that the wife shall be served with or without service on the husband.

Service of writ on infant.

4. When an infant is a defendant to the action, service on his or her father or guardian, or if none, then upon the person with whom the infant resides or under whose care he or she is, shall, unless the court or judge otherwise orders, be deemed good service on the infant; provided that the court or judge may order that service made or to be made on the infant shall be deemed good service.

On lunatic.

5. When a lunatic or person of unsound mind not so found by inquisition is a defendant to the action, service on the committee of the lunatic, or on the person with whom the person of unsound mind resides or under whose care he or she is, shall, unless the court or judge otherwise orders, be deemed good service on such defendant.

For an example of the application of this rule, see *Than* v. *Smith*, 27 W. R. 617.

### 3. *On Partners and other Bodies.*

On partners.

6. Where partners are sued in the name of their firm, the writ shall be served either upon any one or more of the partners or at the principal place within the jurisdiction of the business of the partnership upon any person having at the

time of service the control or management of the partnership business there; and, subject to the rules hereinafter contained, such service shall be deemed good service upon the firm.

As to partners suing and being sued in the name of their firm, see Ord. XVI., Rule 10, p. 156.

Service on person trading in firm name.

6*a*. Where one person, carrying on business in the name of a firm apparently consisting of more than one person, shall be sued in the firm name, the writ may be served at the principal place within the jurisdiction of the business so carried on, upon any person having at the time of service the control or management of the business there; and, subject to any of the rules of the Supreme Court, such service shall be deemed good service on the person so sued (*n*).

Where an individual residing out of the jurisdiction carries on a business within the jurisdiction in a firm name, service of a writ in an action against him will be allowed to be made on his manager within the jurisdiction. (*O'Neill* v. *Clason*, 46 L. J., Q. B. 191.)

On corporation.

7. Whenever, by any statute, provision is made for service of any writ of summons, bill, petition, or other process upon any corporation, or upon any hundred, or the inhabitants of any place, or any society or fellowship, or any body or number of persons, whether corporate or otherwise, every writ of summons may be served in the manner so provided.

By the C. L. P. Act, 1852, s. 16, "every writ of summons issued against a corporation aggregate may be served on the mayor or other head officer, or on the town clerk, treasurer or secretary of such corporation, and every such writ issued against the inhabitants of a hundred or other like district, may be served on the high constable thereof; and every such writ issued against the inhabitants of any city or town, or the inhabitants of any franchise, liberty, city, town or place, not being part of a hundred or other like district, on some peace officer thereof." Where there is no high constable the writ may be served on the chief constable or other acting chief officer of the county police (32 & 33 Vict. c. 47, s. 6). As to service on public companies, see 8 Vict. c. 16, s. 135 (Incorporated Companies); *ib.* c. 18, s. 134 (Incorporated Companies taking land); *ib.* c. 20, s. 135 (Railway Companies); 25 & 26 Vict. c. 89, ss. 62, 63 (Joint Stock Companies). As to Foreign Corporations, see p. 139.

### 4. *In particular Actions.*

Service in action for recovery of land.

8. Service of a writ of summons in an action to recover land may, in case of vacant possession, when it cannot otherwise be effected, be made by posting a copy of the writ upon the door of the dwelling-house or other conspicuous part of the property.

As far as regards the case of vacant possession, this rule is identical with sect. 170 of the C. L. P. Act, 1852. In other cases that section

(*n*) Added by R. S. C., June, 1876, r. 4, p. 560.

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directed service to be made in the same manner as before the Act of 1852. (As to this, see Chit. Arch. Pr. vol. 2, p. 1020, and the cases there cited.) The service was in general personal, and will still be so (see Rule 2, *ante*), except in case of vacant possession.

Service of warrant in Admiralty actions in rem.

Six days.

9. In Admiralty actions in rem the warrant of arrest shall be served by the marshal or his substitutes, whether the property to be arrested be situate within the port of London or elsewhere within the jurisdiction of the court, and the solicitor issuing the warrant shall, within six days from the service thereof, file the same in the registry (*o*).

"Warrant of arrest" takes the place of "writ" in the former Rule 9.

Nailing writ on mast.

10. In Admiralty actions in rem, service of a writ of summons against ship, freight, or cargo on board, is to be effected by nailing or affixing the original writ for a short time on the mainmast, or on the single mast of the vessel, and, on taking off the process, leaving a true copy of it nailed or affixed in its place (*p*).

The service was by the marshal under former Rule 10.

Placing writ on cargo transhipped.

11. If the cargo has been landed or transhipped, service of the writ of summons to arrest the cargo and freight shall be effected by placing the writ for a short time on the cargo, and on taking off the process by leaving a true copy upon it.

Service on custodian of cargo.

12. If the cargo be in the custody of a person who will not permit access to it, service of the writ may be made upon the custodian.

*Generally.*

Indorsement of date of service within three days.

13. The person serving a writ of summons shall, within three days at most after such service, indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default; and every affidavit of service of such writ shall mention the day on which such indorsement was made.

Substantially identical with C. L. P. Act, 1852, sect. 15. This indorsement is not required in the case of substituted service, the practice having been settled by a decision of Huddleston, B., at chambers (*Dymond* v. *Croft* (2), (C. A.) 3 Ch. D. 512; 45 L. J., Ch. 604; 34 L. T. 786; 24 W. R. 842). An amended writ must be served and indorsed like the original writ (*The Cassiopeia* (C. A.), 4 P. D. 188; 48 L. J., P. D. & A. 39; 27 W. R. 703; 40 L. T. 869).

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(*o*) Substituted for the former Rule 9, by R. S. C., Dec. 1875, r. 5, p. 556.

(*p*) Substituted for the former Rule 10, by R. S. C., Dec. 1875, Rule 6, p. 556.

## ORDER X.

### Substituted Service.

Affidavit for substituted service.

Every application to the court or a judge, under Order IX., Rule 2,* for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made.

* Page 135.

## ORDER XI.

### Service out of the Jurisdiction.

Service out of the jurisdiction, when it may be allowed.

1. Service out of the jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the court or a judge whenever the whole or any part of the subject-matter of the action is land or stock, or other property situate within the jurisdiction, or any act, deed, will, or thing affecting such land, stock, or property, and whenever the contract which is sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any such action, or for the breach whereof damages or other relief are or is demanded in such action, was made or entered into within the jurisdiction, and whenever there has been a breach within the jurisdiction of any contract wherever made, and whenever any act or thing sought to be restrained or removed, or for which damages are sought to be recovered, was or is to be done or is situate within the jurisdiction.

As to the writ for service out of the jurisdiction, see Ord. II., Rule 4, p. 124; and for regulations issued by the Chancery Division, see "Subsidiary Regulations," p. 468.

This rule is taken from C. L. P. Act, 1852, sects. 18, 19, the former of which applied to a British subject, and the latter to a foreigner, for whom the "notice" of the writ is designed. For form of notice, see Ord. II., Rule 5, p. 125, and Form 3 in Part I. of Appendix (A.), p. 283.

*Foreign Corporations.*] The rule will, however, apply to foreign corporations, and is therefore wider than sect. 19 of the C. L. P. Act, 1852. (*Scott* v. *The Royal Wax Candle Co.*, 1 Q. B. D. 404; 45 L. J., Q. B. 586; 34 L. T. 683; 24 W. R. 668; *Bacon* v. *Turner*, 1 Ch. D. 275; 34 L. T. 647; 24 W. R. 637; *Westman* v. *Aktiebolaget Erckmans, &c.*, 1 Ex. D. 237; 45 L. J., Ex. 327; 24 W. R. 405.) But when the defendant is a foreigner out of the jurisdiction, notice of the writ, and not the writ itself, should be served. (*Westman* v. *Aktiebolaget Erckmans, &c., supra; Beddington* v. *Beddington*, 45 L. J., P. D. & A. 44; 34 L. T. 366; 24 W. R. 348; *In re Howard, Padley* v. *Camphausen*, 10 Ch. D. 550; 48 L. J., Ch. 364; 27 W. R. 217.) A writ may be served on a British subject out of the jurisdiction, who is charged with a fraud committed in England on an English company. (*The Great Australian Mining Co.* v. *Martin*, 25 W. R. 281.)

An action for slander within the jurisdiction of the title of property outside the jurisdiction is not within this rule. (*Casey* v. *Arnott*, 2 C. P. D. 24; 46 L. J., C. P. 3; 35 L. T. 424; 25 W. R. 46.) For an attempt to add the foreign agents of defendants, see *M'Stephens* v. *Carnegie*, 49 L. J., Ch. 397.

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*Territorial Jurisdiction.*] The words "within the jurisdiction" do not apply to an action for damage done by a foreign ship to an English ship at sea. (*Re Smith*, 1 P. D. 300; 35 L. T. 380; 24 W. R. 903; *Harris* v. *Franconia*, 2 C. P. D. 173; 46 L. J., C. P. 363.)

For an example of service out of the jurisdiction in a partnership action, in which one of the defendants was an Indian firm, and another a Scotch company, see *Harris* v. *Fleming*, 13 Ch. D. 108; 49 L. J., Ch. 32; 28 W. R. 389. The order for service may include an order for interim and ex parte injunction. (*Young* v. *Brassey*, 1 Ch. D. 277; 45 L. J., Ch. 142; 24 W. R. 110.)

The phrase "cause of action," which occurred in sect. 18 of the C. L. P. Act, 1852, as to which there have been so many conflicting decisions (see *Vaughan* v. *Weldon*, L. R., 10 C. P. 47), is studiously omitted from this rule.

Mode of exercising discretion as to service out of jurisdiction.

1*a*. Whenever any action is brought in respect of any contract which is sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any such action, or for the breach whereof damages or other relief are or is demanded in such action, when such contract was made or entered into within the jurisdiction, or whenever there has been a breach within the jurisdiction of any contract, wherever made, the judge, in exercising his discretion as to granting leave to serve such writ or notice on a defendant out of the jurisdiction, shall have regard to the amount or value of the property in dispute or sought to be recovered, and to the existence in the place of residence of the defendant, if resident in Scotland or Ireland, of a local court of limited jurisdiction, having jurisdiction in the matter in question, and to the comparative cost and convenience of proceeding in England or in the place of such defendant's residence, and in all the above-mentioned cases no such leave is to be granted without an affidavit stating the particulars necessary for enabling the judge to exercise his discretion in manner aforesaid, and all such other particulars (if any) as he may require to be shown (*q*).

In Scotland or Ireland, regard to local court.

Scotland and Ireland were in sect. 18 of the C. L. P. Act, 1852, absolutely excepted from places into which a writ could be served out of the jurisdiction. The affidavit, if the writ is for service in Scotland, must state whether there is a local court having jurisdiction. (*Woods* v. *McInnes*, 4 C. P. D. 67; 27 W. R. 49.) For examples of cases in which leave to serve in Scotland was refused, see *Ex parte McPhail*, 12 Ch. D. 632; 48 L. J., Ch. 415; 41 L. T. 338; 27 W. R. 525; and *Creswell* v. *Parker*, 11 Ch. D. 601; 40 L. T. 599; 27 W. R. 897. For an example of a refusal in respect of Ireland, see *Tottenham* v. *Barry*, 12 Ch. D. 797; 48 L. J., Ch. 641; 28 W. R. 180; of the issue of a writ to Ireland, see *Green* v. *Browning*, 34 L. T. 760; and to Scotland, see *Harris* v. *Fleming*, 13 Ch. D. 208; 49 L. J., Ch. 32.

Probate.

2. In probate actions service of a writ of summons or notice of a writ of summons may by leave of the court or judge be allowed out of the jurisdiction.

Evidence in support of order.

3. Every application for an order for leave to serve such

(*q*) Added by R. S. C., June, 1876, Rule 5, p. 560.

writ or notice on a defendant out of the jurisdiction shall be supported by evidence, by affidavit, or otherwise, showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made.

See note to next rule.

Limit of time for appearance.

4. Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within which such defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served or the notice given.

*Notice to Third Parties.*] Rules 4 and 5 of this Order apply to notices to third parties under Ord. XVI., Rule 17, p. 158. (*Swansea Shipping Co.* v. *Duncan & Co.* (C. A.), 1 Q. B. D. 644 ; 45 L. J., Q. B. 638 ; 34 L. T. 685.)

Notice in lieu of service.

5. Notice in lieu of service shall be given in the manner in which writs of summons are served.

This notice of writ in lieu of service is distinct from the "notice substituted for service" mentioned in Ord. X. The person charged with the notice should, unless personal service has been dispensed with under Ord. IX., Rule 1, take with him the original writ, which the defendant has a right to see.

## ORDER XII.

### Appearance.

Appearance in London.

1. Except in the cases otherwise provided for by these rules a defendant shall enter his appearance in London.

Appearances in Central Office.

1*a*. Appearances entered in London shall be entered in the Central Office.

In probate actions notice of appearances entered shall forthwith be given by the Central Office to the Probate Registry (*r*).

When appearance in registry compulsory.

2. If any defendant to a writ issued in a district registry resides or carries on business within the district, he shall appear in the district registry.

If the defendant resides or carries on business within the district, but appears to a registry writ in London, the plaintiff's course is to enter judgment in default of appearance.

When optional.

3. If any defendant neither resides nor carries on business

(*r*) Added by R. S. C., April, 1880, Rule 6, p. 573, in pursuance of the Judicature (Officers) Act, 1879, p. 108.

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in the district, he may appear either in the district registry or in London.

For the practice under this rule in Admiralty actions, see *The General Birch*, 33 L. T. 792; 24 W. R. 24.

When action proceeds in registry.

4. If a sole defendant appears, or all the defendants appear in the district registry, or if all the defendants who appear, appear in the district registry and the others make default in appearance, then, subject to the power of removal hereinafter provided, the action shall proceed in the district registry.

When action proceeds in London.

5. If the defendant appears, or any of the defendants appear, in London the action shall proceed in London; provided that if the court or a judge shall be satisfied that the defendant appearing in London is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such court or judge may order that the action may proceed in the district registry, notwithstanding such appearance in London.

[6. *Mode of appearance.* Annulled, R. S. C., Feb. 1876, Rule 5, p. 558.]

[6*a*. *Mode of appearance.* Annulled, R. S. C., April, 1880, Rule 6, p. 573.]

Notice of appearance.

6*b*. A defendant shall enter his appearance to a writ of summons by delivering to the proper officer a memorandum in writing dated on the day of its delivery, and containing the name of the defendant's solicitor, or stating that the defendant defends in person.

He shall at the same time deliver to the officer a duplicate of the memorandum, which the officer shall seal with the official seal, showing the date on which it is sealed, and then return to the person entering the appearance, and the duplicate memorandum so sealed shall be a certificate that the appearance was entered on the day indicated by the seal.

A defendant shall, on the day on which he enters an appearance to a writ of summons, give notice of his appearance to the plaintiff's solicitor, or, if the plaintiff sues in person, to the plaintiff himself. The notice may be given either by notice in writing served in the ordinary way at the address for service, or by prepaid letter directed to that address and posted on the day of entering appearance in due course of post, and shall in either case be accompanied by the sealed duplicate memorandum (*s*).

By Rule 6*a*, the notice was only required of a defendant who appeared

(*s*) Substituted for Rule 6*a* (which itself was substituted for original Rule 6 by R. S. C., Feb. 1876, Rule 5, p. 558), by R. S. C., April, 1880, Rule 6, p. 573.

elsewhere than where the writ was issued. *Smith* v. *Dobbin* (3 Ex. D. 338; 47 L. J., Ex. 65; 37 L. T. 777; 26 W. R. 122), which decided that where notice failed to be given under the Rule 6*a*, the appearance was irregular and the plaintiff could sign judgment would seem to apply to Rule 6*b*.

Address for service.

7. The solicitor of a defendant appearing by a solicitor shall state in such memorandum his place of business, and, if the appearance is entered in the London office, a place, to be called his address for service, which shall not be more than three miles from Temple Bar, and if the appearance is entered in a district registry, a place, to be called his address for service, which shall be within the district.

This rule is taken from Ch. C. O. III., 2; Temple Bar being substituted for the Record and Writ Clerks' Office.

Appearance in person.

Address of defendant.

8. A defendant appearing in person shall state in such memorandum his address, and, if the appearance is entered in the London office, a place, to be called his address for service, which shall not be more than three miles from Temple Bar; and if the appearance is entered in a district registry, a place to be called his address for service, which shall be within the district.

This is taken from C. L. P. Act, 1852, sect. 30, and Ch. C. O. III., 5.

Illusory address.

9. If the memorandum does not contain such address it shall not be received; and if any such address shall be illusory or fictitious, the appearance may be set aside by the court or a judge, on the application of the plaintiff.

This should be an application by summons.

Form of memorandum.

10. The memorandum of appearance shall be in the Form No. 6,* Appendix (A.), Part I., with such variations as the circumstances of the case may require.

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Entry of memorandum.

11. Upon receipt of a memorandum of appearance, the officer shall forthwith enter the appearance in the cause book.

By Ch. C. O. III., 9, notice of appearance had to be given to the opposite party. This will now be unnecessary, except where appearance is entered after the time limited, as to which see Rule 15 of this Order, *post*.

Appearance of partners.

12. Where partners are sued in the name of their firm, they shall appear individually in their own names. But all subsequent proceedings shall, nevertheless, continue in the name of the firm.

See further as to partners, Ord. XVI., Rule 10, p. 156.

Person trading in firm name.

12*a*. Where any person, carrying on business in the name of a firm apparently consisting of more than one person, shall be sued in the name of the firm, he shall appear in his

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own name; but all subsequent proceedings shall, nevertheless, continue in the name of the firm (*t*).

See Ord. IX., Rule 6*a*, p. 137, *ante*, and Ord. XVI., Rule 10*a*, *post*, p. 156.

One memorandum where one solicitor.

13. If two or more defendants in the same action shall appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in one memorandum.

Attachment of solicitor not entering appearance.

14. A solicitor not entering an appearance in pursuance of his written undertaking so to do on behalf of any defendant shall be liable to an attachment.

This is taken from R. G. H. T. 1853, Rule 3, which, however, did not require the undertaking to be written. A solicitor cannot be changed without an order: Ch. C. O. III., 3; R. G. H. T. 1853, Rule 4. By Ch. C. O. III., 11, "No agreement between any solicitors relating to any of their clients' causes shall be capable of being enforced, unless and until such agreement, or some note or memorial thereof, be put into writing and subscribed by the party who is to be bound thereby, or his solicitor."

As to attachment, see Ord. XLIV., *post*, p. 230.

Time for appearance.

15. A defendant may appear at any time before judgment. If he appear at any time after the time limited for appearance he shall, on the same day, give notice thereof to the plaintiff's solicitor, or to the plaintiff himself if he sues in person, and he shall not, unless the court or a judge otherwise orders, be entitled to any further time for delivering his defence, or for any other purpose, than if he had appeared according to the writ.

Sect. 29 of the C. L. P. Act, 1852, is *in pari materiâ* with this rule.

Intervention in Probate actions.

16. In probate actions any person not named in the writ may intervene and appear in the action as heretofore, on filing an affidavit showing how he is interested in the estate of the deceased.

The Probate Court Rules of 1862 (Rule 6) required the order of a judge or registrar for this purpose.

In Admiralty actions.

17. In an Admiralty action in rem any person not named in the writ may intervene and appear as heretofore, on filing an affidavit showing that he is interested in the res under arrest, or in the fund in the registry.

Recovery of land—appearance by person not defendant.

18. Any person not named as a defendant in a writ of summons for the recovery of land may, by leave of the court or judge, appear and defend, on filing an affidavit showing

(*t*) Added by R. S. C., June, 1876, Rule 6, p. 560.

that he is in possession of the land either by himself or his tenant.

The "action for the recovery of land" was heretofore called the action of ejectment. The former special procedure in this form of action (as to which see C. L. P. Act, 1852, sects. 168—220) required the defendant to appear in sixteen days after writ, and no pleadings were used. The action will now follow the ordinary course. Sched. A. Part II. Sect. 4, p. 290, *post*, contains the form of indorsement on the writ, and Sched. C. Nos. 24, 25, pp. 344—346, *post*, gives forms of statements of claim and defence. The present rule is a re-enactment of sect. 172 of the C. L. P. Act, 1852.

See note to Ord. XVII., Rule 2, p. 161.

Appearance by landlord.

19. Any person appearing to defend an action for the recovery of land as landlord, in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord.

Taken from sect. 173 of the C. L. P. Act, 1852.

Recovery of land—Notice of appearance by person not defendant.

20. Where a person not named as defendant in any writ of summons for the recovery of land has obtained leave of the court or judge to appear and defend, he shall enter an appearance according to the foregoing rules, intituled in the action against the party or parties named in the writ as defendant or defendants, and shall forthwith give notice of such appearance to the plaintiff's solicitor, or to the plaintiff if he sues in person, and shall in all subsequent proceedings be named as a party defendant to the action.

Substantially identical with R. G. H. T. 1853, Rule 113.

Limitation of defence to part of land.

21. Any person appearing to a writ of summons for the recovery of land shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance, or in a notice intituled in the cause, and signed by him or his solicitor; such notice to be served within four days after appearance; and an appearance where the defence is not so limited shall be deemed an appearance to defend for the whole.

This is based on sect. 174 of the C. L. P. Act, 1852, which directed the notice to be filed in the Master's office, in case of no name appearing on the writ. The present rule requires notice to be served in every case.

Notice of appearance.

22. The notice mentioned in the last preceding rule may be in the Form No. 7* in Part I. of Appendix (A.) hereto, with such variations as circumstances may require.

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## ORDER XIII.

### DEFAULT OF APPEARANCE.

Default of appearance by infant or person of unsound mind.

1. Where no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind, not so found by inquisition, the plaintiff may apply to the court or a judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served, and that notice of such application was, after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian, if any, of such infant, unless the court or judge, at the time of hearing such application, shall dispense with such last-mentioned service.

Six days.

A re-enactment of Ch. C. O. VII., Rule 3, which thus becomes applicable to all actions.

Default of appearance generally.

2. Where any defendant fails to appear to a writ of summons, and the plaintiff is desirous of proceeding upon default of appearance, under any of the following rules of this Order, or under Order XV., Rule 1,* he shall, before taking such proceeding upon default, file an affidavit of service, or of notice in lieu of service, as the case may be.

* Page 151.

Affidavit of service.

Proceeding upon default of appearance is taken from the former common law practice. (See C. L. P. Act, 1852, sects. 27, 28.)

For notice in lieu of service, see Ord. IX., Rule 2, p. 135.

Where writ specially indorsed.

3. In case of non-appearance by the defendant, where the writ of summons is specially indorsed, under Order III., Rule 6,† the plaintiff may sign final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified, if any, to the date of the judgment, and a sum for costs, but it shall be lawful for the court or a judge to set aside or vary such judgment upon such terms as may seem just.

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This rule is substantially identical with sect. 27 of the C. L. P. Act, 1852. The costs indorsed on the writ under that section were fixed by R. G. H. T. 1853, Rule 1. For the present scale of costs, see "Orders in Council," I., p. 407, *post*.

An application to set aside or vary a judgment signed under this rule must, as under the old practice, be by a summons.

Where several defendants to writ specially indorsed.

4. Where there are several defendants to a writ specially indorsed for a debt, or liquidated demand in money, under Order III., Rule 6,* and one or more of them appear to the writ, and another or others of them do not appear, the plaintiff may enter final judgment against such as have not appeared, and may issue execution upon such judgment, without prejudice to his right to proceed with his action against such as have appeared.

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This rule deals with the same subject as sect. 33 of the C. L. P. Act, 1852. Before that act, a plaintiff in an action of contract against several defendants, in which some had allowed judgment to go by default, could not issue execution against such defendants until he had recovered judgment against the others. (*Morgan* v. *Edwards*, 6 Taunt. 398.) The Act of 1852 (sect. 33) allowed execution to issue against the defendants suffering judgment in default, but obliged the plaintiff availing himself of the process to abandon his claim against the other defendants. The obligation now no longer exists, and a plaintiff may issue execution against defaulting defendants, and afterwards sue the others.

Where claim for debt on writ not specially indorsed.

5. Where the defendant fails to appear to the writ of summons, and the writ is not specially indorsed, but the plaintiff's claim is for a debt or liquidated demand only, no statement of claim need be delivered, but the plaintiff may file an affidavit of service, or notice in lieu of service, as the case may be, and a statement of the particulars of his claim in respect of the causes of action stated in the indorsement upon the writ, and may, after the expiration of eight days, enter final judgment for the amount shown thereby and costs to be taxed, provided that the amount shall not be more than the sum indorsed upon the writ besides costs.

This rule is practically identical with sect. 28 of the C. L. P. Act, 1852, which required a declaration to be filed, and gave the defendant an opportunity of pleading. The statement of particulars now takes the place of the declaration.

Where writ issued out of district registry, and defendant may appear in London.

5*a*. Where a defendant fails to appear to a writ of summons, issued out of a district registry, and the defendant had the option of entering an appearance either in the district registry or in the London office, judgment for want of appearance shall not be entered by the plaintiff until after such time as a letter posted in London on the previous evening, in due time for delivery to him on the following morning, ought in due course of post to have reached him (*u*).

Where claim for detention of goods or unliquidated damages.

6. Where the defendant fails to appear to the writ of summons, and the plaintiff's claim is not for a debt or liquidated demand only, but for detention of goods and pecuniary damages, or either of them, no statement of claim need be delivered, but interlocutory judgment may be entered and a

(*u*) Added by R. S. C., December, 1875, Rule 7, p. 556.

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writ of inquiry shall issue to assess the value of the goods and the damages, or the damages only, as the case may be, in respect of the causes of action disclosed by the indorsement on the writ of summons. But the court or a judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way in which any question arising in an action may be tried.

The indorsement on the writ now takes the place of the declaration previously required to be filed. By sect. 94 of the C. L. P. Act, 1852, a reference to the master might be had in lieu of writ of inquiry, where the damages were substantially a matter of calculation. Such a reference is included in the power given by the last paragraph of this rule.

It is not necessary that a writ of inquiry should issue or a reference be made; but judgment may be for delivery up of the goods only and be enforced under Ord. XLII., Rule 4 (*post*, p. 225), by writ for delivery of the property.

Where action for recovery of land.

7. In case no appearance shall be entered in an action for the recovery of land, within the time limited for appearance, or if an appearance be entered but the defence be limited to part only, the plaintiff shall be at liberty to enter a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply.

Substantially identical with sect. 177 of the C. L. P. Act, 1852. By R. G. H. T. 1853, Rule 112, an affidavit of service was required before signing this form of judgment. The 2nd Rule of this Order requires such an affidavit generally in entering judgment by default.

As to what is "an action for the recovery of land," see the notes on the similar words in Ord. XII., Rule 18, *ante*, p. 144, and Ord. XVII., Rule 2, *post*, p. 161.

Where claim for mesne profits, &c. and land.

8. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or damages for breach of contract, upon a writ for the recovery of land, he may enter judgment as in the last preceding rule mentioned for the land; and may proceed as in the other preceding rules of this Order as to such other claim so indorsed.

By sect. 214 of the C. L. P. Act, 1852, a claim for mesne profits might be made at the trial of an ejectment by landlord against tenant, whether the defendant appeared at the trial or not, but if he signed judgment by default he would have been obliged to bring another action for mesne profits. This necessity is obviated by the present rule. By Ord. XVII., Rule 2 (p. 161), no causes of action other than those mentioned in this rule may be joined with an action for recovery of land.

In Chancery and Probate actions.

* Page 33.

9. In actions assigned by the 34th* section of the act to the Chancery Division, and in probate actions, and in all other actions not by the rules in this Order otherwise specially provided for, in case the party served with the writ does not appear within the time limited for appearance, upon the filing

by the plaintiff of a proper affidavit of service, the action may proceed as if such party had appeared.

This is substituted for the former Chancery practice (see Ch. C. O. X., 4) of entering an appearance for the defendant.

After the lapse of the time for delivering a statement of defence, the plaintiff may move for judgment under Ord. XXIX., Rule 10. (See *Parsons* v. *Harris*, 6 Ch. D. 694; 25 W. R. 410.

In *Minton* v. *Metcalf* (46 L. J., Ch. 584), V.-C. Hall decided that in a foreclosure action where the defendant did not appear, the plaintiff was bound to deliver a statement of claim before having judgment.

[10. *Admiralty action in rem: Notice of sale and of motion for sale: Ex parte decree for sale: Action of possession: Ex parte decree of possession.* Annulled, R. S. C., December, 1875, Rule 8, p. 556.]

Proceedings in default in Admiralty actions in rem will now be regulated by the former practice. (See *The Polymede*, 1 P. D. 121; 34 L. T. 367; 24 W. R. 256.)

## ORDER XIV.

### Leave to defend where Writ specially indorsed.

[1. *Speedy judgment.* Annulled by R. S. C., May, 1877, Rule 3, and the following rule substituted.]

Application for speedy judgment.

* Page 126.

1*a*. Where the defendant appears to a writ of summons specially indorsed under Order III., Rule 6,* the plaintiff may, on affidavit made by himself, or by any other person who can swear positively to the debt or cause of action, verifying the cause of action, and stating that in his belief there is no defence to the action, call on the defendant to show cause before the court or a judge why the plaintiff should not be at liberty to sign final judgment for the amount so indorsed, together with interest, if any, and costs. A copy of the affidavit shall accompany the summons or notice of motion. The court or a judge may thereupon, unless the defendant, by affidavit or otherwise, satisfy the court or a judge that he has a good defence to the action on the merits, or disclose such facts as may be deemed sufficient to entitle him to defend, make an order empowering the plaintiff to sign judgment accordingly (*x*).

This process, which is intended to prevent defences for the purpose of delay, was introduced into the repealed schedule (Rule 7) of the Act of 1873 upon the recommendation of the Judicature Commissioners (1st Report, p. 11). The process under the Bills of Exchange Act, which is now absorbed in this process (see Ord. II., Rule 6, p. 125), was based on the same principle, but in that case the defendant took the first step after writ.

(*x*) Substituted for former Rule 1 by R. S. C., May, 1877, Rule 3, p. 566.

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Rule 1*a* differs from Rule 1 in allowing the affidavit to be made by any other person as well as the plaintiff, and requiring a copy of it to accompany the summons. The omission was disclosed in *Frederici* v. *Vanderzee* (C. A.), 2 C. P. D. 70; 45 L. J., C. P. 194; 35 L. T. 889; 25 W. R. 389; and *Bank of Montreal* v. *Cameron*, 2 Q. B. D. 536; 46 L. J., Q. B. 425; 36 L. T. 415; 25 W. R. 593. An application may be made against a defendant corporation, which under the words "by affidavit or otherwise" may use affidavits. (*Shelford* v. *Louth and East Coast Railway Co.*, 4 Ex. D. 317; 28 W. R. 407.)

The power given by this rule should be exercised where there is enough to show that the defence is merely set up for the purpose of delay. (*Lloyd's Banking Co.* v. *Ogle*, 1 Ex. D. 262; 45 L. J., Ex. 686; 34 L. T. 584; 24 W. R. 678.)

The plaintiff's affidavit need not be made before the summons. (*Begg* v. *Cooper* (C. A.), 40 L. T. 29; 27 W. R. 224.) The order is interlocutory so that the time for appealing is 21 days. (*Standard Discount Co.* v. *Grange*, 3 C. P. D. 67; 47 L. J., C. P. 3; 37 L. T. 372; 26 W. R. 25.)

For a case where an order was refused against a widow on bills given under coverture, see *Ortner* v. *Fitzgibbon*, 50 L. J., Ch. 17.

In an action involving an account, the proper course is to give plaintiff judgment, execution reserved, for such amount as may be found due. (*Wallingford* v. *Mutual Society* (H. L.), 5 App. Cas. 685; 50 L. J., Q. B. 49.)

Two clear days' summons.

2. The application by the plaintiff for leave to enter final judgment under the last preceding rule shall be made by summons returnable not less than two clear days after service.

Defendant may show cause why judgment should not be signed.

3. The defendant may show cause against such application by offering to bring into court the sum indorsed on the writ, or by affidavit. In such affidavit he shall state whether the defence he alleges goes to the whole or to part only, and if so, to what part, of the plaintiff's claim. And the judge may, if he think fit, order the defendant to attend and be examined upon oath; or to produce any books or documents or copies of or extracts therefrom.

*Affidavit in Reply.*] The judge has a discretion to allow a plaintiff to file an affidavit in reply to the defendant's affidavit. (*Davis* v. *Spence*, 1 C. P. D. 719; 25 W. R. 229; *Rotheram* v. *Priest*, 49 L. J., C. P. 104; 41 L. T. 558; 28 W. R. 277; *Girvin* v. *Grepe*, 13 Ch. D. 174; 49 L. J., Ch. 63; 41 L. T. 522; 28 W. R. 123.)

It is enough if the defendant shows facts on which he ought to be allowed to interrogate the plaintiff. (*Harrison* v. *Bottenheim* (C. A.), 26 W. R. 362.) For a case where the plaintiff had taken out a debtor's summons which had been stayed, see *Ray* v. *Barker*, 4 Ex. D. 279; 48 L. J., Ex. 569; 41 L. T. 265; 27 W. R. 745. Where the defendant set up a counter-claim, see *Anglo-Italian Bank* v. *Wells*, 38 L. T. 197.

There is no necessary right to defend on bringing the amount into court. (*Crump* v. *Cavendish* (C. A.), 5 Ex. D. 211; 49 L. J., Ex. 491.)

Judgment for part.

4. If it appear that the defence set up by the defendant applies only to a part of the plaintiff's claim; or that any part of his claim is admitted to be due; the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted to be due, subject to such terms, if any, as to suspending execution, or the payment of the amount levied or any part thereof into court by

the sheriff, the taxation of costs, or otherwise, as the judge may think fit. And the defendant may be allowed to defend as to the residue of the plaintiff's claim.

See *Lord Hanmer* v. *Flight*, 35 L. T. 127; 24 W. R. 346.

The proper course is not to allow the defendant to defend as to part on the terms of giving security for the rest, but to give the plaintiff judgment for part with leave to defend as to the rest. (*Dennis* v. *Seymour*, 4 Ex. D. 80; 27 W. R. 475.)

Judgment against one of several defendants.

5. If it appears to the judge that any defendant has a good defence to or ought to be permitted to defend the action, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter, and may issue execution upon such judgment without prejudice to his right to proceed with his action against the former.

Terms of leave to defend.

6. Leave to defend may be given unconditionally or subject to such terms as to giving security, or otherwise, as the court or a judge may think fit.

*Money paid into Court.*] Money should not be ordered to be paid into court when the grounds of a substantial defence appear on the defendant's affidavit. (*Runnacles* v. *Mesquita*, 1 Q. B. D. 416; 45 L. J., Q. B. 407; 24 W. R. 553.) Where money has been paid into court and the defendant succeeds, he is entitled to take out the money, in spite of a notice of appeal. (*Yorkshire Banking Co.* v. *Beatson*, 4 C. P. D. 213; 41 L. T. 92; 27 W. R. 914.)

## ORDER XV.

### APPLICATION FOR ACCOUNT WHERE WRIT INDORSED UNDER ORDER III., RULE 8.

Order for account.

1. In default of appearance to a summons indorsed under Order III., Rule 8,* and after appearance unless the defendant, by affidavit or otherwise, satisfy the court or a judge that there is some preliminary question to be tried, an order for the account claimed, with all directions now usual in the Court of Chancery in similar cases, shall be forthwith made.

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As to the making of such an order in a district registry, see *Irlam* v. *Irlam*, 2 Ch. D. 608; 24 W. R. 949. The taking of partnership or other accounts is assigned to the Chancery Division by sect. 34 of the Act of 1873, p. 33, *ante*. A direction that the judge does not require further trial of the action in an order for an account disregarded. (*Gatti* v. *Webster*, 12 Ch. D. 771; 48 L. J., Ch. 763; 41 L. T. 18; 27 W. R. 935.)

Mode and time of application for order for account.

2. An application for such order as mentioned in the last preceding rule shall be made by summons, and be supported by an affidavit filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired.

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## ORDER XVI.

### PARTIES.

Joint, several and alternative claims by plaintiffs.

1. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person or persons who shall not be found entitled to relief, unless the court in disposing of the costs of the action shall otherwise direct.

This rule is based on sect. 19 of the C. L. P. Act, 1860, under which, however, it had been held that "two plaintiffs could not bring an action, saying that one or other of them was entitled to recover." (*Bellingham* v. *Clark*, 1 B. & S. 332.) The insertion of the words "jointly, severally, or in the alternative" will make a statement of claim good in any case where three or more plaintiffs are joined, and judgment is claimed for any one of them, or any two or more of them. Rule 3 of this Order is the converse of the present rule.

An action of libel may be brought by several persons although they have no joint pecuniary interest (*Booth* v. *Briscoe* (C. A.), 2 Q. B. D. 496; 25 W. R. 838), but Jessel, M. R., has expressed an opinion that the owners of two different properties cannot join to restrain a nuisance. (*Appleton* v. *Chapel Town Paper Co.*, 45 L. J., Ch. 276—*sed de hoc quære.*) Covenantor alleged as defence that money was not payable by the terms of the deed, and in the alternative counter-claimed for rectification; held demurrable. (*Evans* v. *Buck*, 4 Ch. D. 432; 46 L. J., Ch. 157; 25 W. R. 392.) In that case Jessel, M. R., said that the old Chancery rule that alternative inconsistent relief cannot be claimed still prevails, *sed quære.*

For a claim to set aside an agreement of partnership for fraud, and in the alternative to dissolve the partnership, see *Bagot* v. *Easton* (C. A.), 7 Ch. D. 1; 47 L. J., Ch. 225; 37 L. T. 369; 26 W. R. 66.

Substitution of other person for wrong plaintiff.

2. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff or plaintiffs, the court or a judge may, if satisfied that it has been so commenced through a bonâ fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted or added as plaintiff or plaintiffs upon such terms as may seem just.

In *Clay* v. *Oxford* (L. R., 2 Ex. 55; 36 L. J., Ex. 15), it was held that the court had no power, under sect. 222 of the C. L. P. Act, 1852, to substitute the name of executors as plaintiffs in the place of their testator, who had been by mistake made plaintiff after his death. This rule will allow an amendment in such and like cases.

"*Bonâ fide* mistake" includes a mistake of law. (*Duckett* v. *Gover*, 6 Ch. D. 82; 46 L. J., Ch. 407; 25 W. R. 554.)

For a case where a contract was made by plaintiff on behalf of another person, and it was doubtful who ought to sue, see *Val de Travers* v. *London Tramways*, 48 L. J., C. P. 312; 40 L. T. 133.

An application by the plaintiff to substitute *cestuis que trustent* for trustee as plaintiffs, and make the plaintiff defendant, ought not to be made without notice to the defendants. (*Tildesley* v. *Harper*, 3 Ch. D. 277.)

For a case where an action was brought in the belief that the plaintiff, a life tenant, had a power to lease, and the remainderman was joined as plaintiff, see *Long* v. *Crossley*, 13 Ch. D. 388; 49 L. J., Ch. 168; 41 L. T. 793; 28 W. R. 226.

The assignor of a debt will not be added without proof of his consent or of an indemnity offered to him. (*Turquand* v. *Fearon*, 4 Q. B. D. 280; 48 L. J., Q. B. 341; 40 L. T. 191; 27 W. R. 396.)

A plaintiff added without his consent cannot have his name struck out on the application of another party. (*Duckett* v. *Gover*, *ubi sup.*)

A defendant may be struck out although he has delivered his statement of defence. (*Vallance* v. *Birmingham, &c. Investment Corporation*, 2 Ch. D. 369; 24 W. R. 454.)

Under an order to strike out the name of one defendant and amend, the plaintiff may not strike out another defendant. (*Wymer* v. *Dodds*, 11 Ch. D. 436; 48 L. J., Ch. 568; 40 L. T. 439; 27 W. R. 675.)

Joint, several and alternative claims against defendants.

3. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

For an example of an alternative claim against a defendant as bound by the contract of another defendant, or against the other defendant, see *Honduras Railway Co.* v. *Tucker* (C. A.), 2 Ex. D. 301; 46 L. J., Ex. 391; 36 L. T. 46; 25 W. R. 310. The plaintiff cannot be called upon at the hearing to elect between two defendants alleged to be liable in the alternative. (*Child* v. *Stenning*, 7 Ch. D. 413; 47 L. J., Ch. 371; 38 L. T. 232; 26 W. R. 265.) In that case, before Fry, J., the first alternative was tried first; the counsel for the second defendant cross-examined the co-defendant's witnesses and addressed the court, and the costs of the unsuccessful claim were imposed on the plaintiff, not on the unsuccessful defendant. (See also Langley on Alternative Relief.)

Defendant need not be wholly interested.

4. It shall not be necessary that every defendant to any action shall be interested as to all the relief thereby prayed for, or as to every cause of action included therein; but the court or a judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in such action in which he may have no interest.

This rule, as well as Ord. XVII., Rule 1 (p. 160), which provides that all causes of action may be joined subject to severance, must be read with Ord. XVII., Rule 8, which provides that causes of action which cannot be conveniently tried together may be ordered to be separately tried.

Defendants severally liable may be joined, and jointly liable separated.

5. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes.

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Previously to this rule, it was necessary upon a several contract to sue each party separately, although many persons may have entered into the same several contract. It was also necessary to sue all the parties to a joint contract together. For instance, where three persons jointly and severally promised, it was necessary either to bring one action against all three on their joint promise, or three actions against each on his several promise. To bring one action against any two exposed the plaintiff to a plea in abatement, unless, indeed, the contract was made by the three and any two of them. Under the present rule, a plaintiff may join any number of parties who have entered into a several contract, and also any less number than all who have entered into a joint contract. The liability of an indorser of a bill of exchange or promissory note is not, it should be remembered, joint with that of acceptor or drawer, but a liability of guarantee.

Joinder of two defendants in case of doubt.

6. Where in any action, whether founded upon contract or otherwise, the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that in such action the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties to the action.

Previously to this rule, it would have been fatal in an action of contract to join several defendants in case of doubt, unless an amendment were made. It might, however, have been done in an action of tort.

For a claim against one defendant as trespasser, and in the alternative against the plaintiff's grantor for breach of covenant for quiet enjoyment, see *Child* v. *Stenning*, 5 Ch. D. 695; 46 L. J., Ch. 523; 36 L. T. 426; 25 W. R. 519.

Beneficiaries may be represented by their trustees, &c.

7. Trustees, executors and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the parties beneficially interested in the trust or estate, and shall be considered as representing such parties in the action; but the court or a judge may, at any stage of the proceedings, order any of such parties to be made parties to the action, either in addition to or in lieu of the previously-existing parties thereto.

This rule follows Rule 9 of 15 & 16 Vict. c. 86, s. 42 (for which see "Incorporated Statutes," p. 492), but is expanded so as to make it unnecessary to join *cestuis que trustent* in actions of the common law type, now that law and equity are administered together. This rule applies to actions under the Partition Acts. (*Simpson* v. *Denny*, 10 Ch. D. 28; 27 W. R. 280.) Bare trustees of the equity of redemption can sue for redemption without beneficiaries. (*Mills* v. *Jennings* (C. A.), 13 Ch. D. 639; 49 L. J., Ch. 209; 42 L. T. 169; 28 W. R. 549.)

Married women and infants.

8. Married women and infants may respectively sue as plaintiffs by their next friends, in the manner practised in the Court of Chancery before the passing of this act; and infants may, in like manner, defend any action by their guardians appointed for that purpose. Married women may also, by the leave of the court or a judge, sue or defend without their

husbands and without a next friend, on giving such security (if any) for costs as the court or a judge may require. *Ord.* XVI.

This will not apply to a married woman suing under the Married Women's Property Act (33 & 34 Vict. c. 93), s. 11, in respect of separate property.

On objection that a defendant cannot be next friend of infant plaintiffs, the name was struck out as defendant. (*Lewis* v. *Nobbs*, 8 Ch. D. 591; 47 L. J., Ch. 662; 26 W. R. 631.)

The application that a next friend give security is not necessarily made at the early date required by the old practice. (*Martano* v. *Mann* (C. A.), 14 Ch. D. 419; 49 L. J., Ch. 510.)

An order for leave for a married woman to defend separately cannot be obtained on a petition of course. (*Noel* v. *Noel*, 13 Ch. D. 510; 28 W. R. 720.)

9. Where there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued, or may be authorized by the court to defend in such action, on behalf or for the benefit of all parties so interested. Numerous parties may be represented by one.

This rule adopts the practice of the former courts of equity.

A shipowner may sue on behalf of himself and the several other owners for freight (*De Hart* v. *Stevenson*, 1 Q. B. D. 313; 45 L. J., Q. B. 575; 24 W. R. 367); and in such a case other parties will not be joined under Rule 13 of this Order merely in order to give security for costs to the other party.

One owner of a patent may represent all. (*Sheehan* v. *G. E. Rail. Co.*, 16 Ch. D. 59; 50 L. J., Ch. 68; 43 L. T. 432; 29 W. R. 69.)

A person whose interest was represented in a previous action is bound by the judgment in that action in a fresh action against himself. (*Commissioners of Sewers of London* v. *Gellatly*, 3 Ch. D. 610; 45 L. J., Ch. 788; 24 W. R. 346.)

*Administration Action.*] A difference of opinion has arisen on the question whether in an administration action the fact that one creditor is suing on behalf of all should appear on the writ; Jessel, M. R. (*Worraker* v. *Pryer*, 2 Ch. D. 109; 45 L. J., Ch. 273; 24 W. R. 269), and Malins, V.-C. (*Adcock* v. *Peters*, W. N. 1876, p. 139), holding that it ought so to appear; and Hall, V.-C. (*Cooper* v. *Blissett*, 1 Ch. D. 691; 45 L. J., Ch. 272; 24 W. R. 235), that it need not. In *Worraker* v. *Pryer*, however, there was no statement of claim, and Jessel, M. R., has since held (*Eyre* v. *Cox*, 24 W. R. 317) that it is enough if the fact appear in the statement of claim. It is in the spirit of Ord. III., Rule 4 (p. 126), that the fact should appear on the writ, but it is not so in the scheduled form, App. A., Part II., Sect. I., No. 1, p. 287.

9*a*. In any case in which the right of an heir-at-law or the next of kin or a class shall depend upon the construction which the court may put upon an instrument, and it shall not be known or be difficult to ascertain who is or are such heir-at-law or next of kin or class, and the court shall consider that in order to save expense or for some other reason it will be convenient to have the question or questions of construction determined before such heir-at-law, next of kin, or class shall have been ascertained by means of inquiry or otherwise, the court may appoint some one or more person or persons to represent such heir-at-law, next of kin, or class, and the judgment of the court in the presence of such person or per- Representation of a class before inquiry into persons composing it.

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sons shall be binding upon the party or parties or class so represented (*y*).

For an application of this rule, see *In re Peppitt, Chester* v. *Phillips*, 4 Ch. D. 230; 46 L. J., Ch. 95; 35 L. T. 902; 25 W. R. 211.

Partners may sue in the name of their firms.

10. Any two or more persons claiming or being liable as copartners may sue or be sued in the name of their respective firms, if any; and any party to an action may in such case apply by summons to a judge for a statement of the names of the persons who are copartners in any such firm, to be furnished in such manner and verified on oath or otherwise as the judge may direct.

As to service when a partnership is made defendant, see Ord. IX., Rule 6, p. 137. As to disclosure of names, Ord. XXXI., Rule 20, and note.

For a case where a cost-book mining company was sued, see *Escott* v. *Gray, &c. Mining Co.*, 47 L. J., C. P. 606; 39 L. T. 121.

Person trading in name of firm.

10*a*. Any person carrying on business in the name of a firm apparently consisting of more than one person may be sued in the name of such firm (*z*).

See Ord. XII., Rule 12*a*, *ante*, p. 143; *O'Neill* v. *Clason*, p. 137.

Incorporation of Chancery procedure as to parties.

11. Subject to the provisions of the act and these rules, the provisions as to parties, contained in section 42 of 15 & 16 Victoria, chapter 86, shall be in force as to actions in the High Court of Justice.

See "Incorporated Statutes," IV., p. 492.

Maintenance of Probate procedure as to parties.

12. Subject as last aforesaid, in all probate actions the rules as to parties, heretofore in use in the Court of Probate, shall continue to be in force.

Service of notice on infant or person of unsound mind.

12*a*. Notice of a judgment or order pursuant to the act 15 & 16 Vict. c. 86, s. 42, on an infant or person of unsound mind not so found by inquisition shall be served in the same manner as a writ of summons in an action (*a*).

Parties to administration proceeding.

12*b*. In any cause for the administration of the estate of a deceased person, no party to the cause other than the executor or administrator shall, unless by leave of the judge, be entitled to appear either in court or in chambers on the claim of any person not a party to the cause against the estate of the deceased in respect of any debt or liability. The judge may direct any other party to the cause to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as he shall think fit (*b*).

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(*y*) Added by R. S. C., June, 1876, Rule 7, p. 560.

(*z*) Added by R. S. C., June, 1876, Rule 8, p. 561.

(*a*) Added by R. S. C., April, 1880, Rules 7 and 8, p. 574.

(*b*) Added by R. S. C., April, 1880, Rules 7 and 8.

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Amendment in case of misjoinder of parties.

13. No action shall be defeated by reason of the misjoinder of parties, and the court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The court or a judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court or a judge to be just, order that the name or names of any party or parties, whether as plaintiffs or as defendants, improperly joined be struck out, and that the name or names of any party or parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent thereto. All parties whose names are so added as defendants shall be served with a summons or notice in manner hereinafter mentioned, or in such manner as may be prescribed by any special order, and the proceedings as against them shall be deemed to have begun only on the service of such summons or notice.

Adding parties.

The first sentence of this rule is more particularly provided for by the first six rules of this Order. The rest of the rule relates to amendment by adding or striking out parties, and in conjunction with the next three rules is substituted for sects. 34—39 of C. L. P. Act, 1852, and 15 & 16 Vict. c. 86, s. 49.

The test whether a party can be added under this rule appears to be whether he could have been made a party on the writ, or if named in the writ could have been struck out. (See *De Hart* v. *Stevenson*, 1 Q. B. D. 313; 45 L. J., Q. B. 575; 24 W. R. 367; *Edwards* v. *Lowther*, 45 L. J., C. P. 417; 34 L. T. 255; 24 W. R. 434.)

If a defendant has been improperly joined his name may be struck out, although he has pleaded; but all applications under the rule should be made as soon as it is known that anyone is improperly joined or the order may be made without costs. (*Vallance* v. *The Birmingham and Midland Land Corporation*, 2 Ch. D. 369; 24 W. R. 454.) Remaindermen added as plaintiffs after death of plaintiff life tenant. (*Long* v. *Crossley*, 13 Ch. D. 388; 49 L. J., Ch. 168.)

This rule does not alter the practice as to citations in a probate action to see proceedings. (*Kennaway* v. *Kennaway*, 1 P. D. 148; 45 L. J., P. D. & A. 86; 34 L. T. 854; 24 W. R. 586. See Rule 12, *ante*.) Refusal to add sanitary authority which had succeeded defendants after judgment. (*Attorney-General* v. *Birmingham*, 15 Ch. D. 423; 43 L. T. 77; 29 W. R. 127.)

Application to amend.

14. Any application to add or strike out or substitute a plaintiff or defendant may be made to the court or a judge at any time before trial by motion or summons, or at the trial of the action in a summary manner.

Assignee of patent added as plaintiff at trial. (*Ruston* v. *Tobin*, 49 L. J., Ch. 262.) Refusal to add plaintiff at trial when point taken in statement of defence. (*Nobel* v. *Jones*, 49 L. J., Ch. 726; *Sheehan* v. *Great Eastern Rail. Co.*, 16 Ch. D. 59; 50 L. J., Ch. 68.)

Service by plaintiff of

15. Where a defendant is added, unless otherwise ordered

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amended writ on new defendant.

by the court or a judge, the plaintiff shall file an amended copy of and sue out a writ of summons, and serve such new defendant with such writ or notice in lieu of service thereof in the same manner as original defendants are served.

The proprietor of a newspaper, disclosed through interrogatories, added as defendant in an action of libel with the same rights as if the action had just commenced. (*Edward* v. *Lowther*, 45 L. J., C. P. 417; 34 L. T. 255; 24 W. R. 434.) Person interested in disputing claim added as defendant in administration action on application of the defendant trustee of the will. (*Day* v. *Radcliffe*, 24 W. R. 844.)

The addition as defendant of the mortgagee of a forfeited lease to an action for recovery by the landlord refused. (*Mills* v. *Griffiths*, 45 L. J., Q. B. 771.) A dissentient bondholder added as defendant to an action brought on behalf of all the other bondholders. (*Wilson* v. *Church*, 9 Ch. D. 552; 39 L. T. 413; 26 W. R. 735.)

For an order made adding new defendants, and also adding one already defendant in a representative character without further service of the writ, and without indorsing the representative character, to take effect after eight days unless the added defendants show cause, see *Re Wortley, Culley* v. *Wortley*, 4 Ch. D. 180; 46 L. J., Ch. 182; 25 W. R. 295.

Copy of amended statement of claim, for new defendant.

16. If a statement of claim has been delivered previously to such defendant being added, the same shall, unless otherwise ordered by the court or judge, be amended in such manner as the making such new defendant a party shall render desirable, and a copy of such amended statement of claim shall be delivered to such new defendant at the time when he is served with the writ of summons or notice or afterwards, within four days after his appearance.

Four days.

Claim by defendant against third party.

17. Where a defendant is or claims to be entitled to contribution or indemnity, or any other remedy or relief over against any other person, or where from any other cause it appears to the court or a judge that a question in the action should be determined not only as between the plaintiff and defendant, but as between the plaintiff, defendant, and any other person, or between any or either of them, the court or a judge may, on notice being given to such last-mentioned person, make such order as may be proper for having the question so determined.

The 3rd sub-sect. of sect. 24 of the Act of 1873 (p. 16), and the three following rules of this Order, provide the procedure to be adopted. This procedure is only for the purpose of binding the third party, against whom a separate action must be brought if relief is required. (*Treleaven* v. *Bray* (C. A.), 1 Ch. D. 176; 45 L. J., Ch. 113; 33 L. T. 827; 24 W. R. 198; *The Cartsburn*, 5 P. D. 59.) For cases where leave was refused on the ground of undue prejudice to the plaintiff, see *Bower* v. *Hartley*, 1 Q. B. D. 652; 24 W. R. 941, and *Associated Home Company* v. *Whicheord*, 8 Ch. D. 457; 47 L. J., Ch. 652; 38 L. T. 602; 26 W. R. 774. For a case where an order in bankruptcy restraining proceedings under this rule was discharged on appeal, see *Ex parte Smith, In re Collin*, 2 Ch. D. 51; 45 L. J., Bk. 116; 34 L. T. 603; 24 W. R. 310. In an action of negligence where the defendants pleaded that the damage was caused by imperfection in a tramway, leave to join the Tramway Company as third party, refused (diss. Brett, L. J.), *Howell* v. *London General Omnibus Company* (C. A.), 2 Ex. D. 365; 46 L. J., Ex. 700; 36 L. T. 637; 25 W. R. 610. Principal brought into action against agent. (*Norris* v. *Beazley*, 46 L. J.,

C. P. 515; 36 L. T. 409.) For a case where the third party at the trial succeeded in reducing the damages below the amount paid into court by the defendant, but was not allowed his costs from the plaintiff, see *Williams* v. *South Eastern Railway Co.*, 26 W. R. 652. The third party cannot counter-claim. (*Street* v. *Gover*, 2 Q. B. D. 498; 46 L. J., Q. B. 582; 36 L. T. 766; 25 W. R. 750.) The rule does not apply to claims by one defendant against a person already a co-defendant. (Per Hall, V.-C., *Shepherd* v. *Beam*, 2 Ch. D. 223; 45 L. J., Ch. 429; 24 W. R. 363; but see note to next rule.)

Purchaser from defendant of goods rejected for defective quality made third party to an action for not accepting. (*Beucke* v. *Frost*, 1 Q. B. D. 419; 45 L. J., Q. B. 693; 34 L. T. 728; 24 W. R. 669.) The power is not confined to a case in which the claim against the third party is identical with the whole of the claim of the plaintiff against the defendant. See *Swansea Shipping Co.* v. *Duncan* (C. A.), 1 Q. B. D. 644; 45 L. J., Q. B. 638; 34 L. T. 685, where a sub-purchaser was made third party to an action against charterer for demurrage, and where a notice was allowed to be served out of the jurisdiction under Ord. XI., Rules 17, 18. Leave refused where third parties numerous. (*Wye Valley* v. *Hawes* (C. A.), 50 L. J., Ch. 225.)

Leave to the third party brought in under this rule to bring in another party, refused. (*Walker* v. *Balfour*, 25 W. R. 511.) Such leave granted (*Witham* v. *Vane*, 49 L. J., Ch. 242), and third party allowed to put in statement of defence. Where a vendee had been brought in as third party to an action of demurrage, a sub-vendee was also brought in. (*Fowler* v. *Knoop*, 36 L. T. 219.) For a case where a purchaser from a second mortgagee was made a defendant in an action against first mortgagee to a counter-claim, under circumstances in which he might have been made a third party, see *Dear* v. *Sworder*, 4 Ch. D. 476; 46 L. J., Ch. 100; 25 W. R. 124. Refusal to add unpaid residuary legatees as defendants to an action for specific performance of an agreement to buy land mortgaged by the trustees of the will. (*Harry* v. *Davey*, 2 Ch. D. 721; 45 L. J., Ch. 697; 34 L. T. 842; 24 W. R. 576.)

Notice to third party.

18. Where a defendant claims to be entitled to contribution, indemnity or other remedy or relief over against any person not a party to the action, he may, by leave of the court or a judge, issue a notice to that effect, stamped with the seal with which writs of summons are sealed. A copy of such notice shall be filed with the proper officer, and served on such person according to the rules relating to the service of writs of summons. The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the court or a judge, be served within the time limited for delivering his statement of defence. Such notice may be in the form or to the effect of the Form No. 1* in Appendix (B.) hereto, with such variations as circumstances may require, and therewith shall be served a copy of the statement of claim, or if there be no statement of claim, then a copy of the writ of summons in the action.

Form of notice.

* Page 298.

In an action against B. and C., B. claimed contribution from C. in his defence, which was delivered to C.; held sufficient notice without an order (*Butler* v. *Butler*, 14 Ch. D. 329; 49 L. J., Ch. 742), but not where the co-defendant merely bought a copy of the defence. (*Steel* v. *Dixon*, 42 L. T. 765.)

Third party added by judge.

19. When under Rule 17 of this Order it is made to appear to the court or a judge at any time before or at the trial that

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a question in the action should be determined, not only as between the plaintiff and defendant, but as between the plaintiff and the defendant and any other person, or between any or either of them, the court or a judge, before or at the time of making the order for having such question determined, shall direct such notice to be given by the plaintiff at such time and to such person and in such manner as may be thought proper, and, if made at the trial, the judge may postpone such trial as he may think fit.

This rule seems to contemplate some action to be taken by a judge if the defendant has of himself taken no step under the previous rule.

Appearance by third party.

20. If a person not a party to the action, who is served as mentioned in Rule 18, desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, he must enter an appearance in the action within eight days from the service of the notice. In default of his so doing, he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise: Provided always, that a person so served and failing to appear within the said period of eight days may apply to the court or a judge for leave to appear, and such leave may be given upon such terms, if any, as the court or a judge shall think fit.

On default, taken to admit judgment against defendant.

Further proceedings on appearance of third party.

21. If a person not a party to the action served under these rules appears pursuant to the notice, the party giving the notice may apply to the court or a judge for directions as to the mode of having the question in the action determined; and the court or judge, upon the hearing of such application, may, if it shall appear desirable so to do, give the person so served liberty to defend the action upon such terms as shall seem just, and may direct such pleadings to be delivered, or such amendments in any pleadings to be made, and generally may direct such proceedings to be taken, and give such directions as to the court or a judge shall appear proper for having the question most conveniently determined, and as to the mode and extent in or to which the person so served shall be bound or made liable by the decision of the question.

This rule seems to deal with the decision of the original claim in the action as between the plaintiff and the third party introduced into the action. (See *Benecke* v. *Frost*, 1 Q. B. D. 419; 45 L. J., Q. B. 693; 34 L. T. 728; 24 W. R. 669.)

## ORDER XVII.

### JOINDER OF CAUSES OF ACTION.

All causes of action may be joined subject to severance.

1. Subject to the following rules, the plaintiff may unite in the same action and in the same statement of claim several causes of action, but if it appear to the court or a judge that

any such causes of action cannot be conveniently tried or disposed of together, the court or judge may order separate trials of any such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

This is an extension of sect. 41 of the C. L. P. Act, 1852, which only allowed the joining of causes of action by and against the same parties and in the same rights, and did not extend to replevin or ejectment. (See Ord. XVI., Rule 4, p. 154.)

Exception in recovery of land.

2. No cause of action shall, unless by leave of the court or a judge, be joined with an action for the recovery of land, except claims in respect of mesne profits or arrears of rent in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof are held.

The application for leave must be made before issuing the writ (*Pilcher* v. *Hinds* (C. A.), 11 Ch. D. 905; 48 L. J., Ch. 587; 40 L. T. 832; 27 W. R. 789.) An action for foreclosure (*Tawell* v. *The Slate Co.*, 3 Ch. D. 629), and an action to establish title to land (*Gledhill* v. *Hunter*, 14 Ch. D. 492; 49 L. J., Ch. 333) have been held by Jessel, M. R., not to be an action for the recovery of land within this rule; but an action to establish title to land has, by Hall, V.-C., been held to be within it. (*Whetstone* v. *Dewis*, 1 Ch. D. 99; 45 L. J., Ch. 49; 33 L. T. 501; 24 W. R. 93, in this case action to establish title was allowed to be joined with a claim to administer personal estate claimed under the same will.) See also *Kitching* v. *Kitching*, 24 W. R. 845.

Claims for the delivery up and cancellation of a deed relating to land allowed to be joined with one for the recovery of the land (*Cook* v. *Enchmarch*, 2 Ch. D. 111; 45 L. J., Ch. 504; 24 W. R. 293); and claims for the recovery of land and for a receiver. (*Allen* v. *Kennett*, 24 W. R. 845.)

In bankruptcy.

3. Claims by a trustee in bankruptcy as such shall not, unless by leave of the court or a judge, be joined with any claim by him in any other capacity.

By or against husband and wife.

4. Claims by or against husband and wife may be joined with claims by or against either of them separately.

By or against executor.

5. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

This rule is probably intended to avoid the technical difficulty formerly felt in the inability, at common law, to join claims in respect of contracts made with a testator during his life, with those in respect of sums due to the executor or administrator in respect of contracts relating to the estate made by him after the testator's death. (See, for example, *Moseley* v. *Rendell*, L. R., 6 Q. B. 338; *Abbott* v. *Parfitt*, L. R., 6 Q. B. 346; 40 L. J., Q. B. 115; 24 L. T. 469; 19 W. R. 718.)

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Joint claims joined with several.

6. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.

See Ord. XVI., Rule 1, p. 152, *ante*.

Subject to severance.

7. The last three preceding rules shall be subject to Rule 1 of this Order, and to the rules hereinafter contained.

Application for severance.

8. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of in one action, may at any time apply to the court or a judge for an order confining the action to such of the causes of action as may be conveniently disposed of in one proceeding.

Order for severance if joinder inconvenient.

9. If, on the hearing of such application as in the last preceding rule mentioned, it shall appear to the court or a judge that the causes of action are such as cannot all be conveniently disposed of in one action, the court or a judge may order any of such causes of action to be excluded, and may direct the statement of claim, or, if no statement of claim has been delivered, the copy of the writ of summons, and the indorsement of claim on the writ of summons, to be amended accordingly, and may make such order as to costs as may be just.

Applications under this and the preceding rule should be by summons.

## ORDER XVIII.

### ACTIONS BY AND AGAINST LUNATICS AND PERSONS OF UNSOUND MIND.

Lunatics may sue and be sued as in Chancery before act.

In all cases in which lunatics and persons of unsound mind not so found by inquisition might respectively before the passing of the act have sued as plaintiffs, or would have been liable to be sued as defendants in any action or suit, they may respectively sue as plaintiffs in any action by their committee or next friend in manner practised in the Court of Chancery before the passing of the said act, and may in like manner defend any action by their committees or guardians appointed for that purpose.

The practice in the Court of Chancery was for the committee, before suing or defending for a lunatic, to obtain the sanction of the Lord Chancellor or Lords Justices, sitting in Lunacy. (See Act of 1875, sect. 7). As to suing by next friend, see *Beall* v. *Smith* (L. R., 9 Ch. 85; 43 L. J., Ch. 245; 29 L. T. 625), and the cases there cited. As to the appointment of a guardian *ad litem* to a defendant of unsound mind, see Ord. XIII., Rule 1, p. 146.

## ORDER XIX.



### Pleading generally.

1. The following rules of pleading shall be substituted for those heretofore used in the High Court of Chancery, and in the Courts of Common Law, Admiralty, and Probate. New pleading.

By sect. 100 of the Act of 1873, p. 64, *ante*, "pleading" includes any "petition or summons," but Rules 17, 18 and 19 of this Order (p. 168, *post*) except any petition or summons from their operation.

The pleading heretofore in use in the Divorce Court is retained for divorce proceedings in the Probate, Divorce and Admiralty Division. (For the sources of Divorce Procedure, see "Additional Acts," VII., p. 546.)

"The systems of pleading now in use, both at common law and in equity," observed the Judicature Commissioners, "appear to us to be open to serious objections. Common law pleadings are apt to be mixed averments of law and fact, varied and multiplied in form, and leading to a great number of useless issues, while the facts which lie behind them are seldom clearly discoverable. Equity pleadings, on the other hand, commonly take the form of a prolix narrative of the facts relied upon by the party, with copies or extracts of deeds, correspondence, and other documents, and other particulars of evidence set forth at needless length. The best system would be one which combined the comparative brevity of the simpler forms of common law pleading with the principle of stating intelligibly, and not technically, the substance of the facts relied upon as constituting the plaintiff's or the defendant's case, as distinguished from his evidence. It is upon this principle that most modern improvements of pleading have been founded, both in the United States and in our own Colonies and Indian possessions, and in the practice recently settled for the Courts of Probate and Divorce." (1st Report, A.D. 1869, p. 11.)

2. Unless the defendant in an action at the time of his appearance shall state that he does not require the delivery of a statement of complaint, the plaintiff shall, within such time and in such manner as hereinafter prescribed,* deliver to the defendant after his appearance, a statement of his complaint, and of the relief or remedy to which he claims to be entitled. The defendant shall, within such time and in such manner as hereinafter prescribed,† deliver to the plaintiff a statement of his defence, set-off, or counter-claim (if any), and the plaintiff shall in like manner ‡ deliver a statement of his reply (if any) to such defence, set-off, or counter-claim. Such statements shall be as brief as the nature of the case will admit, and the court in adjusting the costs of the action shall inquire at the instance of any party into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same. Statement of claim. * Page 173. Defence. † Page 175. ‡ Page 178. Reply. Costs.

By Ord. XXII., Rule 2, the defendant may, after dispensing with a statement of claim, deliver a statement of defence. The effect of his dispensing with a statement of complaint is not expressly given, but as the plaintiff will have to make out his case, it has, where no statement of defence is delivered, the effect of a general traverse. It seems intended that the defendant should always dispense with a statement of claim when the writ sufficiently discloses the nature of the claim. The

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schedule of the Act of 1873 required pleadings to be filed, but this practice is by these Orders abandoned, except where no appearance has been entered. (See Rule 6 of this Order.)

*Special Reply.*] The plaintiff may reply specially. (*Hall* v. *Eve* (C. A.), 4 Ch. D. 341; 46 L. J., Ch. 145; 35 L. T. 926; 25 W. R. 177.)

Set-off and counter-claim.

3. A defendant in an action may set off, or set up, by way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a statement of claim in a cross-action, so as to enable the court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the court or a judge may, on the application of the plaintiff before trial, if in the opinion of the court or judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof.

At common law, set-off was given by 2 Geo. 2, c. 22, s. 13, which enacts that where there are mutual debts between plaintiff and defendant, one debt may be set against the other. The right of set-off in equity was little more extended. The present rule makes the sweeping change of allowing not only unliquidated damages in contract, but also claims in tort, to be set against one another. A defendant may now obtain judgment for debt or damages (see Act of 1873, sect. 24, sub-sect. 3). Set-off will be pleaded in the statement of defence exactly as if it were a statement in a cross-action. But there appears to be nothing in the present act to alter the former rule that the defendant may, if he pleases, bring a cross-action, and not plead a set-off at all (see *Laing* v. *Chatham*, 1 Camp. 252 (at law), and *Jenner* v. *Morris*, 30 L. J., Ch. 361 (in equity)); but the tendency is to have the actions tried together. (See *Holmes* v. *Hervey*, 35 L. T. 600; 25 W. R. 80.)

It is not necessary that a counter-claim should be for an amount equal to the plaintiff's claim. (*Mostyn* v. *The West Mostyn, &c. Co.*, 1 C. P. D. 145; 45 L. J., C. P. 401; 34 L. T. 325; 24 W. R. 401.)

A claim of indemnity against a co-defendant is not a counter-claim. (*Turner* v. *Booth*, 4 Ch. D. 586; 46 L. J., Ch. 112; 25 W. R. 267.) For a refusal to exclude a counter-claim for damages in delaying delivery of goods against each of two railway companies suing jointly for tolls, see *Manchester and Sheffield Rail. Co.* v. *Brooks*, 2 Ex. D. 243; 46 L. J., Ex. 244; 36 L. T. 103; 25 W. R. 413. Counter-claim provable in an administration action excluded. (*Newell* v. *National Provincial Bank of England*, 1 C. P. D. 496; 45 L. J., C. P. 285; 34 L. T. 533; 24 W. R. 458.) Counter-claim maintained by husband and wife for debt to wife, and for detinue of pictures of husband in an action against the wife's separate estate. (*Hodson* v. *Machi*, 8 Ch. D. 569; 47 L. J., Ch. 604; 38 L. T. 635; 26 W. R. 590.) Counter-claim against plaintiff as executrix not allowed in action by her personally. (*Macdonald* v. *Carington*, 4 C. P. D. 28; 48 L. J., Ch. 179; 39 L. T. 426; 27 W. R. 153.) Refusal to exclude counter-claim by a company in respect of concealment of plaintiff's testator, on sale of property by him to them, in an action by executors against the company on debentures. (*Huggons* v. *Tweed* (C. A.), 10 Ch. D. 359; 40 L. T. 284; 27 W. R. 495.) Claim of damages allowed by way of set-off for breach of contract by assignor in action in the contract by assignee. (*Young* v. *Kitchin*, 3 Ex. D. 127; 47 L. J., Ex. 579; 26 W. R. 403.) Counter-claim of damages for libel excluded in action for rent. (*Rotheram* v. *Priest*, 28 W. R. 277.)

In an action for 10,000*l.* on a covenant of indemnity, a counter-claim against the plaintiff as executor of defendant's father, also liable on the covenant, that the plaintiff ought to have paid himself out of the father's assets, and that the father had created a trust to pay the amount, struck out. (*Padwick* v. *Scott*, 2 Ch. D. 736; 45 L. J., Ch. 350; 24 W. R. 723.) In an action for dissolution of partnership, a counter-claim for services rendered distinct from the partnership disallowed. (*Naylor* v. *Farrer*, 26 W. R. 809.) For a case where a claim and counter-claim were tried separately for convenience, see *In re Woodfine, Thompson* v. *Woodfine*, 47 L. J., Ch. 832; 38 L. T. 753; 26 W. R. 678. Jessel, M. R., has held that damages on a counter-claim must be confined to the date of the writ. (*Original Hartlepool Collieries Co.* v. *Gibb*, 5 Ch. D. 713; 46 L. J., Ch. 311; 36 L. T. 433, *sed quære*. Malins, V.-C., has declined to give judgment in a counter-claim not contested on the pleadings until the claim has been dismissed. (*Aitken* v. *Dunbar*, 46 L. J., Ch. 489; 25 W. R. 366.)

The allegations in support of a counter-claim must be as specific as in a statement of claim, and the relief must be claimed in the same way. (See *Warner* v. *Twining*, 24 W. R. 536; and *Holloway* v. *Yorke*, 25 W. R. 627, per Jessel, M. R.) Where, after thirteen paragraphs of "defence and counter-claim," the fourteenth claimed damages "in consequence of the defendant's expenditure aforesaid," Fry, J., struck out the counter-claim, and refused leave to amend. (*Crowe* v. *Barnicott*, 6 Ch. D. 753; 46 L. J., Ch. 855; 37 L. T. 68; 25 W. R. 789.) There need not, however, according to a decision of the same learned judge, be a line drawn between defence and counter-claim, nor need the paragraphs be separately numbered. (*Lees* v. *Paterson*, 7 Ch. D. 866; 47 L. J., Ch. 616; 38 L. T. 451; 26 W. R. 399.)

In the Admiralty Division limitation of liability may be claimed by counter-claim in place of a separate action (*The Clutha*, 35 L. T. 36); or as an equitable defence (*Wahlberg* v. *Young*, 24 W. R. 847).

Pleading not to contain evidence.

4. Every pleading shall contain as concisely as may be a statement of the material facts on which the party pleading relies, but not the evidence by which they are to be proved, such statement being divided into paragraphs, numbered consecutively, and each paragraph containing, as nearly as may be, a separate allegation. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of counsel shall not be necessary. Forms similar to those in Appendix (C.)* hereto may be used.

Forms of pleading.

* Page 310.

The forms given in Appendix (C.) show more clearly, by illustration, the distinction intended between stating "material facts" and stating "evidence." It is a material fact in an action on a contract made by letter, that the plaintiff sent a letter to the defendant, accepting the proposal. It is mere evidence of that fact to say that the plaintiff wrote the letter, and delivered it to his clerk who duly posted it. It is a fact material to the defence of *son assault demesne*, that the plaintiff struck the defendant, but to state that A. B., a bystander, saw the first blow struck, is evidence. It is not, however, intended that the pleader should (as formerly under the common law system) deal in mere abstractions. He must give a history of actual occurrences, generally in chronological order. The rule as to pleading evidence excludes admissions. (*Davy* v. *Garrett*, 7 Ch. D. 473; 47 L. J., Ch. 218; 38 L. T. 77; 26 W. R. 225.)

A statement of claim should not contain any allegations of conclusions of law, such as were known as the charging parts of a bill in Chancery. (*Watson* v. *Rodwell* (C. A.), 45 L. J., Ch. 744; 35 L. T. 86; 24 W. R. 1009.) Statement of claim setting out facts, amounting neither to libel nor malicious prosecution, held bad. (*Harris* v. *Warre*, 4 C. P. D. 125; 48 L. J., C. P. 310; 40 L. T. 429; 27 W. R. 461.)

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Notwithstanding this rule a desire has been expressed by Malins, V.-C., that pleadings should still be signed by counsel. (*Duckitt* v. *Jones*, 33 L. T. 777.)

Printing and writing pleadings.

5. Every pleading which shall contain less than ten (*b*) folios of 72 words each (every figure being counted as one word) may be either printed or written, or partly printed and partly written, and every other pleading, not being a petition or summons, shall be printed.

See R. S. C. (Costs), Ord. V., *post*, p. 408.

Delivery of pleadings.

6. Every pleading or other document required to be delivered to a party, or between parties, shall be delivered in the manner now in use to the solicitor of every party who appears by a solicitor, or to the party if he does not appear by a solicitor, but if no appearance had been entered for any party, then such pleading or document shall be delivered by being filed with the proper officer.

A notice of motion for judgment may be filed under this rule (*Dymond* v. *Croft* (C. A.), 3 Ch. D. 512; 45 L. J., Ch. 612; 35 L. T. 29; 24 W. R. 700; *Morton* v. *Miller*, 3 Ch. D. 516; 45 L. J., Ch. 613; 24 W. R. 723); but Malins, V.-C., has decided that it is not necessary to file it. (*Williams* v. *Cardwell*, 25 W. R. 640.)

Where trustee in bankruptcy is added after the defendant became bankrupt, and he does not appear, the statement of claim need not be filed. (*Chorlton* v. *Dickie*, 13 Ch. D. 160; 49 L. J., Ch. 40; 41 L. T. 467; 28 W. R. 228.)

Formal contents of pleadings.

7. Every pleading in an action shall be delivered between parties, and shall be marked on the face with the date of the day on which it is delivered, and with the reference to the letter and number of the action, the division to which and the judge (if any) to whom the action is assigned, the title of the action, the description of the pleading, and the name and place of business of the solicitor and agent, if any, delivering the same, or the name and address of the party delivering the same if he does not act by a solicitor.

As to the title in an administration action, see "Subsidiary Orders," *post* p. 471.

Statement of claim.

8. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and may also ask for general relief. And the same rule shall apply to any counter-claim made, or relief claimed by the defendant, in his statement of defence. If the plaintiff's claim be for discovery only, the statement of claim shall show it.

*Rectification of Documents.*] Where the facts stated show that a docu-

(*b*) Altered from "three" by R. S. C., June, 1876, Rule 9, p. 561.

ment is in its present form by mistake, the court will treat it as rectified, without a prayer for its reformation. (*Breslauer* v. *Barwick*, 24 W. R. 901.) *Ord.* XIX.

9. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off, or counter-claim founded upon separate and distinct facts. Separation of distinct claims and counter-claims.

10. Where any defendant seeks to rely upon any facts as supporting a right of set-off or counter-claim, he shall, in his statement of defence, state specifically that he does so by way of set-off or counter-claim. Set-off and counter-claim.

If not so specifically stated the plaintiff may join issue, as Rule 20 of this Order does not then apply. (*Hillman* v. *Mayhew* (2), 24 W. R. 485.)
See note to Rule 3.

11. If either party wishes to deny the right of any other party to claim as executor, or as trustee, whether in bankruptcy or otherwise, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically. Denial of right of executor, &c.

12. In probate actions where the plaintiff disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest. Probate.

See *Medcalf* v. *James*, 25 W. R. 63.

13. No plea or defence shall be pleaded in abatement. No plea in abatement.

Many of the subjects of the former plea in abatement, such as non-joinder of a contractor, are no longer applicable to actions by reason of Ord. XVI. The rest, such as coverture, will be pleaded in the statement of defence.

14. No new assignment shall hereafter be necessary or used. But everything which has heretofore been alleged by way of new assignment may hereafter be introduced by amendment of the statement of claim. No new assignment.

The necessity for new assignments arose mainly from the great generality of common law pleadings. Where a defendant does not answer the whole claim of the plaintiff, the amendment allowed by this rule will enable him to make his statement of complaint more definite. (See note to Ord. XXIV., Rule 1, p. 178.)

15. No defendant in an action for the recovery of land who is in possession by himself or his tenant need plead his title, unless his defence depends on an equitable estate or right, or he claims relief upon any equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinbefore mentioned, it shall be sufficient to state by Recovery of land.

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way of defence that he is so in possession. And he may nevertheless rely upon any ground of defence which he can prove, except as hereinbefore mentioned.

This rule seems based on the maxim that a plaintiff must recover land on the strength of his own, not the weakness of the defendant's, title. The concurrent administration of law and equity in the High Court makes pleading more essential than formerly, when there were no pleadings in ejectment, and an equitable defence could not be set up. It would seem that a plaintiff must disclose his title upon his statement of claim.

Not guilty by statute.

16. Nothing in these rules contained shall affect the right of any defendant to plead not guilty by statute. And every defence of not guilty by statute shall have the same effect as a plea of not guilty by statute has heretofore had. But if the defendant so plead he shall not plead any other defence without the leave of the court or a judge.

By R. G. H. T. 1853, Rule 21, a defendant pleading not guilty by statute was bound to insert in the margin of the plea the particulars of the statutes on which he relied. This rule seems still in force. By 5 & 6 Vict. c. 97, s. 3, the privilege of pleading not guilty by statute when conferred by a local and personal act is taken away. By 21 Jac. 1, c. 4, s. 4, not guilty by statute may be pleaded in all penal actions. By 11 & 12 Vict. c. 44, s. 17, justices of the peace may plead not guilty by statute in actions for anything done by them in the execution of their office. There are many other statutes under which persons in a public capacity are allowed this advantage in pleading.

Allegation not denied to be taken to be admitted.

17. Every allegation of fact in any pleading in an action, not being a petition or summons, if not denied specifically, or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition.

See note to Rule 20.

For a judgment on admissions in an action for dissolution of partnership, the defence being evasive and not specific, see *Thorp* v. *Holdsworth*, 3 Ch. D. 637; 45 L. J., Ch. 406.

Where an agreement was alleged through an agent, and the defendant denied the agreement through an agent or otherwise, and added that the maker of the agreement was of unsound mind, it was held that the unsoundness of mind was the only issue. (*Byrd* v. *Nunn*, 7 Ch. D. 284; 47 L. J., Ch. 1; 37 L. T. 585; 26 W. R. 110.) In that case leave to amend was refused, but when the donee of a power was alleged to have received a certain sum as a bribe, and the defence denied that he had received that sum as a bribe, but did not deny the bribe altogether, leave to amend was given by the Court of Appeal. (*Tildesley* v. *Harper* (C. A.), 10 Ch. D. 393; 48 L. J., Ch. 495; 39 L. T. 552; 27 W. R. 249.)

The words "The defendant denies the song has been duly registered the time of the first publication thereof is not truly entered," were held by Fry, J., to preclude the defendant from proving that the publisher's name was untruly stated, and leave to amend refused. (*Collette* v. *Goode*, 7 Ch. D. 842; 47 L. J., Ch. 370; 38 L. T. 504.)

It has been held by Fry, J., that a defendant who "puts the plaintiff to the proof of the allegations in the statement of claim" admits them. (*Harris* v. *Gamble*, 7 Ch. D. 877; 47 L. J., Ch. 344; 33 L. T. 253.)

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Raising issues.

18. Each party in any pleading, not being a petition or summons, must allege all such facts not appearing in the previous pleadings as he means to rely on, and must raise all such grounds of defence or reply, as the case may be, as if not raised on the pleadings would be likely to take the opposite party by surprise, or would raise new issues of fact not arising out of the pleadings, as, for instance, fraud, or that any claim has been barred by the Statute of Limitations or has been released.

See note to Rule 23.

Departure.

19. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

Claim for rent; counter-claim for money had and received; reply that the defendant held over after expiration of lease, and plaintiff as intermediate landlord, whose time also expired, had to pay damages to his landlord:—Held, a departure. (*Duckworth* v. *McClelland*, 2 Ir. L. R. 527.)

Specific answer to claim and counter-claim.

20. It shall not be sufficient for a defendant in his defence to deny generally the facts alleged by the statement of claim, or for a plaintiff in his reply to deny generally the facts alleged in a defence by way of counter-claim, but each party must deal specifically with each allegation of fact of which he does not admit the truth.

For a case where a reply to a counter-claim was held bad for generality, see *Benbow* v. *Low*, 13 Ch. D. 553; 49 L. J., Ch. 259. For a case where it was held good, though general, see *Rolfe* v. *Maclaren*, 3 Ch. D. 106. "Each of the allegations in the counter-claim is untrue:"—Held by Fry, J., to admit them all. (*Green* v. *Sevin*, 13 Ch. D. 589.)

Joinder of issue.

21. Subject to the last preceding rule, the plaintiff by his reply may join issue upon the defence, and each party in his pleading, if any, subsequent to reply, may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined, but it may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted.

These two rules definitely forbid the use of pleas like never indebted and not guilty, which are contrary to the general spirit of the new pleading. The defendant also may not simply join issue on the plaintiff's statement, nor, it would seem, merely state that he puts the plaintiff to prove it.

A reply which begins with a joinder of issue on the defence, and then proceeds to confess and avoid it, is wrong. (*Earp* v. *Henderson*, 3 Ch. D. 254; 34 L. T. 844.)

Negatives pregnant, &c. forbidden.

22. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular

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amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And so when a matter of fact is alleged with divers circumstances, it shall not be sufficient to deny it as alleged along with those circumstances, but a fair and substantial answer must be given.

A similar rule occurred in Ch. C. O. XV., Rule 2. The present rule is to be strictly enforced. (*Thorp* v. *Holdsworth*, 45 L. J., Ch. 406.)

Denial of contract.

23. When a contract is alleged in any pleading, a bare denial of the contract by the opposite party shall be construed only as a denial of the making of the contract in fact, and not of its legality or its sufficiency in law, whether with reference to the Statute of Frauds or otherwise.

Statute of Frauds.

The facts raising the defence of the Statute of Frauds must be specially pleaded, and it cannot be relied on in virtue of traverses to allegations in the claim. (*Clark* v. *Callow*, 46 L. J., Q. B. 53.) And it is not enough to say that the defendant relies on that statute without giving facts. (*Pullen* v. *Snelus*, 48 L. J., C. P. 394; 40 L. T. 363; 27 W. R. 534.) Nor can a defence under this statute be raised by demurrer to the statement of claim. (*Catling* v. *King*, 5 Ch. D. 660; 46 L. J., Ch. 384; 36 L. T. 526; 25 W. R. 550.) In *Dawkins* v. *Penryn* (4 App. Cas. 51; 48 L. J., Ch. 304; 39 L. T. 583; 27 W. R. 173), Lord Cairns laid it down that the Statute of Limitation with regard to real property may be raised on demurrer, because the statute makes title; but with regard to personal actions it must be pleaded, and so must the Statute of Frauds. In *Noyes* v. *Crawley* (10 Ch. D. 31; 48 L. J., Ch. 112; 39 L. T. 266; 27 W. R. 109), Malins, V.-C., allowed the Statute of Limitation to be raised by demurrer in a partnership action, notwithstanding the opinion of Lord Cairns; and the in case of *Wakelee* v. *Davis* (25 W. R. 60), where a defendant demurred to a statement of claim on the ground of the Statute of Frauds, and the demurrer was overruled, and he did plead the statute, it was held by the Court of Appeal that he might rely on the statute at the trial. (*Johnasson* v. *Bonhote*, 2 Ch. D. 298; 45 L. J., Ch. 651; 34 L. T. 745; 24 W. R. 619.)

Documents to be abstracted.

24. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole, or any part thereof, unless the precise words of the document, or any part thereof, are material.

A similar, though somewhat less imperative, rule was contained in Ch. C. O. VIII., Rule 2, which appears to have relied on the discretion of counsel signing the pleading. The C. L. P. Act, 1852, sect. 56, dealt with a similar subject at common law.

Allegations of malice, &c.

25. Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

Of notice.

26. Wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege

such notice as a fact, unless the form or the precise terms of such notice be material. *Ord.* XIX.

Of implied agreement.

27. Wherever any contract, or any relation between any persons, does not arise from an express agreement, but is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And if, in such case, the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

Presumptions of law not to be alleged.

28. Neither party need in any pleading allege any matter of fact which the law presumes in his favour, or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied.

[E. g.—Consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim.]

Filing in district registry.

29. Where an action proceeds in a district registry all pleadings and other documents required to be filed shall be filed in the district registry.

Filing, where cause in Chancery Division.

29*a*. When a cause in the Chancery Division is proceeding in a district registry, all certificates of the chief clerk and taxing masters and all affidavits and other documents (required to be filed) used in London before the judge in chambers, or before any taxing master or referee of the court, and not already filed in the district registry, shall be filed in the same office as they would have been filed in if the proceedings had originally commenced in London; and if the court or judge shall so direct, office copies thereof shall be transmitted to the district registry (*c*).

Collision of vessels.

30. In actions for damage by collision between vessels, unless the court or a judge shall otherwise order, each solicitor shall, before any pleading is delivered, file with the proper officer a document to be called a Preliminary Act, which shall be sealed up and shall not be opened until ordered by the court or a judge, and which shall contain a statement of the following particulars:— Preliminary act.

(*a*.) The names of the vessels which came into collision, and the names of their masters.

(*b*.) The time of the collision.

(*c*) Added by R. S. C., March, 1879, Rule 4, p. 568.

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(*c.*) The place of the collision.
(*d.*) The direction of the wind.
(*e.*) The state of the weather.
(*f.*) The state and force of the tide.
(*g.*) The course and speed of the vessel when the other was first seen.
(*h.*) The lights, if any, carried by her.
(*i.*) The distance and bearing of the other vessel when first seen.
(*k.*) The lights, if, any, of the other vessel which were first seen.
(*l.*) Whether any lights of the other vessel, other than those first seen, came into view before the collision.
(*m.*) What measures were taken, and when, to avoid the collision.
(*n.*) The parts of each vessel which first came into contact.

Opening of preliminary acts.

If both solicitors consent, the court or a judge may order the preliminary acts to be opened, and the evidence to be taken thereon, without its being necessary to deliver any pleadings.

This rule is a substantial re-enactment of Rules 62—64 of the Admiralty Rules and Orders, November, 1859.

*Vice-Admiralty Courts.*] A similar form of Preliminary Act should be used in Vice-Admiralty Courts. (*The Norma* (P. C.), 35 L. T. 418.)

## ORDER XX.

### PLEADING MATTERS ARISING PENDING THE ACTION.

Before statement of defence.

1. Any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence, and before the time limited for his doing so has expired, may be pleaded by the defendant in his statement of defence, either alone or together with other grounds of defence. And if, after a statement of defence has been delivered, any ground of defence arises to any set-off or counter-claim alleged therein by the defendant, it may be pleaded by the plaintiff in his reply, either alone or together with any other ground of reply.

This rule is *in pari materiâ* with sect. 68 of the C. L. P. Act, 1852. A counter-claim arising after action must be pleaded as so arising. (*Ellis* v. *Munson* (C. A.), 35 L. T. 585.)

After statement of defence.

2. Where any ground of defence arises after the defendant has delivered a statement of defence, or after the time limited for his doing so has expired, the defendant may, and where any ground of defence to any set-off or counter-claim arises after reply, or after the time limited for delivering a reply

has expired, the plaintiff may, within eight days after such such ground of defence has arisen, and by leave of the court or a judge, deliver a further defence or further reply, as the case may be, setting forth the same.

The pleading mentioned in this rule represents the plea *puis darrein continuance*, which, by the C. L. P. Act, 1852, sect. 59, could be pleaded at Nisi Prius in the long vacation.

Confession of defence.

3. Whenever any defendant, in his statement of defence, or in any further statement of defence as in the last rule mentioned, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence, which confession may be in the form No. 2* in Appendix (B.) hereto, with such variations as circumstances may require, and he may thereupon sign judgment for his costs up to the time of the pleading of such defence unless the court or a judge shall, either before or after the delivery of such confession, otherwise order.

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The absolute right to costs given by R. G. T. T. 1853, Rule 22, seems retained in this rule. (See *Foster* v. *Gamgee*, 1 Q. B. D. 666; 45 L. J., Q. B. 576; 34 L. T. 248; 24 W. R. 319.) Bankruptcy arising after the action, although the act of bankruptcy was committed before, comes within this rule, and if pleaded, plaintiff may sign judgment for his costs. (*Champion* v. *Formby*, 7 Ch. D. 373; 47 L. J., Ch. 395; 26 W. R. 391. See also *Callendar* v. *Hawkins*, 2 C. P. D. 592; 26 W. R. 212.)

## ORDER XXI.

### Statement of Claim.

Delivery of statement of claim.

1. Subject to Rules 2 and 3 of this Order, the delivery of statements of claim shall be regulated as follows:—

(*a.*) If the defendant shall not state that he does not require the delivery of a statement of claim, the plaintiff shall, unless otherwise ordered by the court or a judge, deliver it within six weeks from the time of the defendant's entering his appearance.

Six weeks.

Voluntary statement.

(*b.*) The plaintiff may, if he think fit, at any time after the issue of the writ of summons, deliver a statement of claim, with the writ of summons or notice in lieu of writ of summons, or at any time afterwards, either before or after appearance, and although the defendant may have appeared and stated that he does not require the delivery of a statement of claim: provided that in no case where a defendant has appeared shall a statement be delivered more than six weeks after the appearance has been entered unless otherwise ordered by the court or a judge.

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Costs of unnecessary statement of claim.

(*c*) Where a plaintiff delivers a statement of claim without being required to do so, the court or a judge may make such order as to the costs occasioned thereby as shall seem just, if it appears that the delivery of a statement of claim was unnecessary or improper.

By sect. 58, C. L. P. Act, 1852, a plaintiff had one year to declare in, after which a judgment of *non pros.* might be entered by the defendant. He might also be compelled to declare by a four-days' notice. (C. L. P. Act, 1852, sect. 53.) The present rules are more peremptory than the common law practice, which did not compel a party to take the next step in pleading without a notice from his opponent, which was generally given with the preceding pleading. In equity, the defendant was obliged to plead or answer within 28 days from the delivery of interrogatories.

Where it was intended that the action should be taken as a "short cause," Hall, V.-C., dispensed with the statement of claim (*Green* v. *Coleby*, 1 Ch. D. 693; 45 L. J., Ch. 303; 24 W. R. 246); but Malins, V.-C., in *Breton* v. *Mockett* (33 L. T. 684) and *Boyes* v. *Cook* (33 L. T. 778) seems to have taken a different view.

Time for delivery of a statement of claim extended after Statute of Limitation had expired in an action commenced before. (*Canadian Oil Wells Corporation* v. *Hay*, 38 L. T. 549.)

Where the writ claimed rescission but the statement of claim did not, it was held by Fry, J., that rescission could not be granted, and leave to amend was refused. (*Cargill* v. *Bower*, 10 Ch. D. 502; 47 L. J., Ch. 649; 38 L. T. 779; 26 W. R. 716.)

Delivery of statement of claim in probate actions.

Six weeks.

Eight days.

2. In probate actions the plaintiff shall, unless otherwise ordered by the court or a judge, deliver his statement of claim within six weeks from the entry of appearance by the defendant, or from the time limited for his appearance in case he has made default; but where the defendant has appeared the plaintiff shall not be compelled to deliver it until the expiration of eight days after the defendant has filed his affidavit as to scripts.

In admiralty actions.

Twelve days.

3. In admiralty actions in rem the plaintiff shall, within twelve days from the appearance of the defendant, deliver his statement of claim.

Notice that special indorsement is statement of claim.

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4. Where the writ is specially indorsed, and the defendant has not dispensed with a statement of claim, it shall be sufficient for the plaintiff to deliver as his statement of claim a notice to the effect that his claim is that which appears by the indorsement upon the writ, unless the court or a judge shall order him to deliver a further statement. Such notice may be either written or printed, or partly written and partly printed, and may be in the Form No. 3* in Appendix (B.) hereto, and shall be marked on the face in the same manner as is required in the case of an ordinary statement of claim. And when the plaintiff is ordered to deliver such further statement it shall be delivered within such time as by such order shall be directed, and if no time be so limited, then within the time prescribed by Rule 1 of this Order.

As to the character of a special indorsement, see Ord. III., p. 126, and Schedule A., Part II., sect. vii., p. 295.

Non-fulfilment of the provisions of this rule does not give a defendant any additional time for his defence, but only prevents the plaintiff from signing judgment for want of defence. (See note to Rule 1, *supra*, and Ord. XXII., Rule 3, *infra*.)

## ORDER XXII.

### DEFENCE.

Time for delivering defence. Eight days.

1. Where a statement of claim is delivered to a defendant he shall deliver his defence within eight days from the delivery of the statement of claim, or from the time limited for appearance, whichever shall be last, unless such time is extended by the court or a judge.

As to enlargement of time, see Ord. LVII., Rule 6, p. 254. If the time is extended for delivery of statement of defence, the defendant may demur at any time up to the limit of the time so given. (*Hodges* v. *Hodges*, 2 Ch. D. 112; 24 W. R. 293. See further, Ord. XIX., Rule 2.)

Where defence voluntary. Eight days.

2. A defendant who has appeared in an action and stated that he does not require the delivery of a statement of claim, and to whom a statement of claim is not delivered, may deliver a defence at any time within eight days after his appearance, unless such time is extended by the court or a judge.

Where leave to defend. * Page 149. Eight days.

3. Where leave has been given to a defendant to defend under Order XIV., Rule 1,* he shall deliver his defence, if any, within such time as shall be limited by the order giving him leave to defend; or if no time is thereby limited, then within eight days after the order.

This overrides the general rules, and therefore prevents the necessity of a statement of claim. (See Ord. XXI., Rules 1 and 4, and notes thereto.)

Costs of improper denial or non-admission of acts.

4. Where the court or a judge shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the court may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted.

Counter-claim involving others than plaintiff.

5. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other person or persons, he shall add to the title of his defence a further title similar to the title in a statement of complaint, setting forth the names of all the persons who, if such counter-claim were to be enforced by cross-action, would be defendants to such cross-action, and shall deliver his defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff.

For a case where a purchaser from a second mortgagee in an action for

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account against first mortgagee was made defendant to a counter-claim, see *Dear* v. *Sworder*, 4 Ch. D. 476; 46 L. J., Ch. 100; 25 W. R. 124. For a case where the plaintiff's guarantor was made party in the alternative to a counter-claim on a contract under which both sides claimed damages, see *Turner* v. *Hednesford Gas Co.* (C. A.),3 Ex. D. 145; 47 L. J., Q. B. 296; 38 L. T. 8; 26 W. R. 308.

As to claims by a defendant against a person not a party, see Ord. XVI., Rules 18—21, p. 159.

See also note to Ord. XIX., Rule 10, p. 167, *ante*.

It seems that a defendant cannot under this rule add a party to a counter-claim against whom he claims as an alternative to his counter-claim against the plaintiff. (*Central African Trading Co.* v. *Grove* (C. A.), 48 L. J., Ex. 510.)

Claim against person not party.

6. Where any such person as in the last preceding rule mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence, and such service shall be regulated by the same rules as are hereinbefore contained with respect to the service of a writ of summons, and every defence so served shall be indorsed in the Form No. 4* in Appendix (B.) hereto, or to the like effect.

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Appearance by third party.

7. Any person not a defendant to the action, who is served with a defence and counter-claim as aforesaid, must appear thereto as if he had been served with a writ of summons to appear in an action.

Reply in nature of defence by third party.

8. Any person named in a defence as a party to a counter-claim thereby made may deliver a reply within the time within which he might deliver a defence if it were a statement of claim.

Application to exclude counter-claim.

9. Where a defendant by his statement of defence sets up a counter-claim, if the plaintiff or any other person named in manner aforesaid as party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, he may at any time, before reply, apply to the court or a judge for an order that such counter-claim may be excluded, and the court or a judge may, on the hearing of such application, make such order as shall be just.

See Ord. XIX., Rule, 3, p. 164.

Judgment for defendant for balance.

10. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

The balance here mentioned is the balance found after trial, and therefore an account will not be ordered to be taken of what is due on a

counter-claim until the plaintiff's claim is decided. (*Rolfe* v. *M'Laren*, 3 Ch. D. 106; 24 W. R. 816.) *Ords.* XXII., XXIII.

Notice in probate actions of intention to cross-examine only.

11. In probate actions the party opposing a will may, with his defence, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall be subject to the same liabilities in respect of costs as he would have been under similar circumstances according to the practice of the Court of Probate.

## ORDER XXIII.

### Discontinuance.

Before defence by notice.

1. The plaintiff may, at any time before receipt of the defendant's statement of defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, wholly discontinue his action or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay the defendant's costs of the action, or, if the action be not wholly discontinued, the defendant's costs occasioned by the matter so withdrawn. Such costs shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action. Save as in this rule otherwise provided, it shall not be competent for the plaintiff to withdraw the record or discontinue the action without leave of the court or a judge, but the court or a judge may, before, or at, or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise as may seem fit, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. The court or a judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counter-claim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave.

Afterwards by leave.

Withdrawal of defence.

The notice to discontinue is substituted for the rule to discontinue at law and the motion to dismiss the plaintiff's own bill in equity, both of which were generally of course. The present notice is of less extended application than the former rule or order of course, as it only applies where the pleading has gone no farther than the statement of defence. The rule, which re-enacts Rule 46 in the schedule of Act of 1873, seems intended still to allow the record to be withdrawn at the trial by leave of the judge, although its wording is a little ambiguous.

Leave to discontinue refused after arbitrator had found nearly all the

*Ords.* XXIII., XXIV.

claim in defendant's favour. (*Stahlschmidt* v. *Walford*, 4 Q. B. D. 217; 48 L. J., Q. B. 348; 40 L. T. 194; 27 W. R. 412.) Leave to withdraw defence given in action to recover land. (*Real, &c. Advance Co.* v. *McCarthy*, 14 Ch. D. 188.) Where plaintiff, having given an undertaking for damages, discontinued, the court directed a reference as to damages notwithstanding. (*Newcomen* v. *Coulson*, 7 Ch. D. 764; 47 L. J., Ch. 429; 38 L. T. 275; 26 W. R. 350.) Plaintiff who discontinues must pay costs of an interlocutory application in which he succeeds, costs being made costs in the cause. (*The St. Olaf*, 2 P. D. 113; 46 L. J., P. 74; 36 L. T. 30.) Although no statement of defence has been delivered, the plaintiff cannot discontinue without leave after entry for trial. (*Matthews* v. *Antrobus*, 49 L. J., Ch. 80.) Where plaintiff discontinues defendant's counter-claim drops. (*Vavasseur* v. *Krupp*, 15 Ch. D. 474.)

*Fi fa. for Costs.*] A *fi. fa.* in a modified form was allowed to issue for the defendant's costs under the former part of this rule, although no judgment had been signed. (*Bolton* v. *Bolton*, 3 Ch. D. 276; 35 L. T. 358; 24 W. R. 663. See Ord. XLII., Rule 9, *post*, p. 226.) This is now provided for by the Rule 2, which allows judgment to be signed for the costs.

Withdrawal by consent.

2. When a cause has been entered for trial, it may be withdrawn by either plaintiff or defendant, upon producing to the proper officer a consent in writing, signed by the parties (*d*).

Judgment for costs.

2. A defendant may sign judgment for the costs of an action if it is wholly discontinued, or for the costs occasioned by the matter withdrawn, if the action be not wholly discontinued (*e*).

## ORDER XXIV.

### REPLY AND SUBSEQUENT PLEADINGS.

Reply in three weeks.

1. A plaintiff shall deliver his reply, if any, within three weeks after the defence or the last of the defences shall have been delivered, unless the time shall be extended by the court or a judge.

As to time of pleading generally, see note to Ord. XXI., Rule 1. By the former practice at law the defendant might give a four-days' notice to the plaintiff's reply. Otherwise no time to reply was limited.

If a plaintiff wishes to adduce fresh facts after the statement of defence, he should do so by amendment of his statement of claim, and not in his reply (*Earp* v. *Henderson*, 3 Ch. D. 254; 45 L. J., Ch. 738; 34 L. T. 844); unless by way of confession and avoidance of the defence, in which case they rightly appear in the reply. (*Hall* v. *Eve* (C. A.), 4 Ch. D. 341; 46 L. J., Ch. 145; 35 L. T. 926; 25 W. R. 177. See Ord. XIX., Rule 14.)

A reply to a defence of coverture, that the plaintiff did not know of it, and that the defendant had separate estate, held good (*Collett* v. *Dickinson*, 26 W. R. 403); also a reply to a married woman in an action against

(*d*) Added by R. S. C., Dec. 1875, Rule 9, p. 556.

(*e*) Added by R. S. C., June, 1876, Rule 10, p. 561. This rule is marked to be numbered 2, although that number was occupied by the previous rule.

her bankers, who pleaded her coverture, that her account was of separate property. (*Summers* v. *City Bank*, 9 C. P. 580; 43 L. J., C. P. 261; 31 L. T. 268.)

Pleadings after reply by leave.

2. No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the court or a judge, and then upon such terms as the court or judge shall think fit.

Leave to rejoin refused as unnecessary. (*Norris* v. *Beazley*, 35 L. T. 845.)

Pleadings after reply. Four days.

3. Subject to the last preceding rule, every pleading subsequent to reply shall be delivered within four days after the delivery of the previous pleading, unless the time shall be extended by the court or a judge.

## ORDER XXV.

### Close of Pleadings.

Joinder of issue to be close of pleadings.

As soon as either party has joined issue upon any pleading of the opposite party simply without adding any further or other pleading thereto, the pleadings as between such parties shall be deemed to be closed.

## ORDER XXVI.

### Issues.

Settlement of issues by judge.

Where in any action it appears to a judge that the statement of claim or defence or reply does not sufficiently define the issues of fact in dispute between the parties, he may direct the parties to prepare issues, and such issues shall, if the parties differ, be settled by the judge.

Where the parties were agreed as to the questions of fact between them, they might, by sect. 42 of C. L. P. Act, 1852, have such issues tried without pleadings.

This practice, which has been for some time in force in British India, is by this rule introduced for the first time in this country for all actions, though in use in interpleader before these acts.

## ORDER XXVII.

### Amendment of Pleadings.

Striking out embarrassing and introducing necessary matter.

1. The court or a judge may, at any stage of the proceedings, allow either party to alter his statement of claim or defence or reply, or may order to be struck out or amended any matter in such statements respectively which may be scandalous, or which may tend to prejudice, embarrass or

*Ord.* XXVII. delay the fair trial of the action, and all such amendments shall be made as may be necessary for the purpose of determining the real questions or question in controversy between the parties.

This rule combines ss. 52 and 222 of the C. L. P. Act, 1852, extending the former by allowing scandalous as well as embarrassing matter to be struck out, and the latter by not confining the amendment to questions in controversy "in the existing suit." Matters might be excepted to and taken off the file for scandal in the Court of Chancery, under Ch. C. O. VIII., 2; XVI., XXXVI., 60; and amendments made under Ch. O. IX., 15.

The decision of a judge under this rule is discretionary, and will not, as a rule, be interfered with on appeal. (*Golding* v. *The Wharton Saltworks Co.* (C. A.), 1 Q. B. D. 374; 34 L. T. 474; 24 W. R. 423; *Watson* v. *Rodwell* (C. A.), 3 Ch. D. 380; 45 L. J., Ch. 744; 35 L. T. 86; 24 W. R. 1009.)

A reply joining issue ought not to be struck out under this rule merely because it does not deal specifically with a counter-claim, as a party ought not to be allowed to compel his opponent to amend his pleadings as he thinks proper. (Hall, V.-C., in *Rolfe* v. *M'Laren*, 3 Ch. D. 106; 24 W. R. 816.)

Refusal to strike out letters set out in full in a statement of claim for an account (*Davy* v. *Garrett*, 26 W. R. 110); to strike out many distinct facts relied on by way of equitable defence (*Heap* v. *Morris*, 2 Q. B. D. 630; 46 L. J., Q. B. 761, and see *Hanmer* v. *Flight*, 35 L. T. 127; 24 W. R. 346); and to strike out allegation of seduction in action for breach of promise of marriage. (*Millington* v. *Loring* (C. A.), 43 L. T. 657.) Matters of law struck out as embarrassing. (*Stokes* v. *Grant*, 4 C. P. D. 25; 40 L. T. 36; 27 W. R. 397.) A statement of claim that by certain assurances the plaintiff was entitled to land held embarrassing. (*Phillips* v. *Phillips*, 4 Q. B. D. 127; 48 L. J., Q. B. 135; 39 L. T. 556; 27 W. R. 436.) In *Spurr* v. *Hall* (2 Q. B. D. 615; 46 L. J., Q. B. 693; 37 L. T. 313; 26 W. R. 902), it was held, in the Queen's Bench, that pleas denying a nuisance and paying money into court were embarrassing; but in *Berdan* v. *Greenwood* (3 Ex. D. 251; 47 L. J., Ex. 628; 39 L. T. 223; 26 W. R. 902) denial of the cause of action, and payment into court in respect thereof, were allowed together by the Court of Appeal; and in *Hawkesley* v. *Bradshaw* (5 Q. B. D. 302; 49 L. J., Q. B. 333; 42 L. T. 285; 28 W. R. 557) payment into court and justification of libel were allowed by the Court of Appeal.

Plaintiff sending statement of claim containing charges against defendant to persons not parties is guilty of contempt. (*Bowden* v. *Russell*, 46 L. J., Ch. 414; 36 L. T. 177.) Statement permissible under the old system of pleading may be struck out. (*Watson* v. *Rodwell*, 3 Ch. D. 380; 45 L. J., Ch. 744; 35 L. T. 86; 24 W. R. 1009.) "Which was the usual course of conduct" after allegations of misconduct against defendants struck out as scandalous. (*Blake* v. *Albion Life Assurance Society*, 45 L. J., C. P. 663; 35 L. T. 269; 24 W. R. 677.)

As to the grounds on which an amendment at or after the time for hearing will be allowed, see *Budding* v. *Murdock*, 1 Ch. D. 42; 45 L. J., Ch. 213; 24 W. R. 23; *King* v. *Corke*, 1 Ch. D. 57; 45 L. J., Ch. 190; 33 L. T. 375; 24 W. R. 23.

A judge under this rule may make amendments, even by adding a new cause of action. (See sect. 24, sub-sect. 7, of the Act of 1873.)

Amendment without leave, by plaintiff.

Four weeks.

2. The plaintiff may, without any leave, amend his statement of claim once at any time before the expiration of the time limited for reply and before replying, or, where no defence is delivered, at any time before the expiration of four

weeks from the appearance of the defendant who shall have last appeared.

Without leave, by defendant.

3. A defendant who has set up in his defence any set-off or counter-claim may, without any leave, amend such set-off or counter-claim at any time before the expiration of the time allowed him for pleading to the reply, and before pleading thereto; or in case there be no reply, then at any time before the expiration of twenty-eight days from the filing of his defence.

Twenty-eight days.

Disallowance of amendment.

Eight days.

4. Where any party has amended his pleading under either of the last two preceding rules, the opposite party may, within eight days after the delivery to him of the amended pleading, apply to the court, or a judge, to disallow the amendment, or any part thereof, and the court or judge, may, if satisfied that the justice of the case requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as may seem just.

Counter-amendment.

5. Where any party has amended his pleading under Rule 2 or 3 of this order, the other party may apply to the court or a judge for leave to plead or amend his former pleading within such time and upon such terms as may seem just.

Amendment by leave.

6. In all cases not provided for by the preceding rules of this order, application for leave to amend any pleading may be made by either party to the court or a judge in chambers, or to the judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may seem just.

An affidavit in support of the application is sufficient if it state that the applicant has additional grounds for pleading. (*Cargill* v. *Bower*, 4 Ch. D. 78; 46 L. J., Ch. 175; 35 L. T. 621.)

Lapse of order to amend.

Fourteen days.

7. If a party who has obtained an order for leave to amend a pleading delivered by him does not amend the same within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days, as the case may be, become ipso facto void, unless the time is extended by the court or a judge.

Amendment, whether to be in writing or printed.

8. A pleading may be amended by written alterations in the pleading which has been delivered, and by additions on paper to be interleaved therewith if necessary, unless the amendments require the insertion of more than 144 words in any one place, or are so numerous or of such a nature that the making them in writing would render the pleading diffi-

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cult or inconvenient to read, in either of which cases the amendment must be made by delivering a print of the pleading as amended.

Date of amendment to be marked.

9. Whenever any pleading is amended, such pleading, when amended, shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz.: "Amended day of ."

Delivery of amended pleading.

10. Whenever a pleading is amended, such amended pleading shall be delivered to the opposite party within the time allowed for amending the same.

Amendment of writ of summons.

11. The court, or a judge, may, at any stage of the proceedings, allow the plaintiff to amend the writ of summons in such manner, and on such terms, as may seem just (*f*).

This rule will, it would seem, prevent the necessity for any order for particulars in cases where no statement of claim is delivered. (See notes to Ord. III., Rule 6, p. 126, *ante*.)

## ORDER XXVIII.

### DEMURRER.

To distinct allegation.

1. Any party may demur to any pleading of the opposite party or to any part of a pleading setting up a distinct cause of action, ground of defence, set-off, counter-claim, reply, or as the case may be, on the ground that the facts alleged therein do not show any cause of action or ground of defence to a claim or any part thereof, or set-off, or counter-claim, or reply, or as the case may be, to which effect can be given by the court as against the party demurring.

The admissions made by demurrer are only for its purposes, and cannot be used for other purposes. (*Day* v. *Brownrigg* (C. A.), 27 W. R. 217.)

A specially-endorsed writ with notice in lieu of statement of claim under Ord. XXI., Rule 4, p. 174, may be demurred to. (3 C. P. D. 280; 47 L. J., C. P. 480; 38 L. T. 715; 26 W. R. 683.)

The Statute of Frauds cannot be relied on by way of demurrer (*Catling* v. *King*, 5 Ch. D. 660; 46 L. J., Ch. 384; 36 L. T. 526; 25 W. R. 550; *Morgan* v. *Worthington*, 38 L. T. 443; and per Cairns, C., in *Dawkins* v. *Penryn*, 4 App. Cas. 51; 48 L. J., Ch. 304; 39 L. T. 583; 27 W. R. 173.)

Where a paragraph sets up a distinct cause of action, defence, &c., the opposite party should not apply to strike out, but demur. (*Watson* v. *Hawkins*, 24 W. R. 884.) Paragraphs tending to show that the plaintiff is entitled to any one of the several forms of relief prayed, are not demurrable (*ib.*). Demurrers not going to the whole pleading to be discouraged. (*Leyman* v. *Latimer* (C. A.), 37 L. T. 819.) A demurrer to a claim alleging particular damages "and otherwise" not overruled when there might be nominal damages. (*Powell* v. *Jewsbury* (C. A.), 9 Ch. D. 34;

(*f*) Added by R. S. C., February, 1876, Rule 6, p. 559.

39 L. T. 213; 27 W. R. 142.) Defendant pleaded without demurring; plaintiff amended without substantially making a new case: held, that defendant could demur notwithstanding old rule in Chancery (*ib.*).

Demurrer to action by shareholder against vendor with the company; defendant allowed leave given to make company plaintiff. (*Duckett* v. *Gover*, 6 Ch. D. 82; 46 L. J., Ch. 407; 25 W. R. 554.)

Ground of demurrer to be stated.

2. A demurrer shall state specifically whether it is to the whole or to a part, and if so, to what part, of the pleading of the opposite party. It shall state some ground in law for the demurrer, but the party demurring shall not, on the argument of the demurrer, be limited to the ground so stated. A demurrer may be in the Form 28* in Appendix (C.) hereto. If there is no ground, or only a frivolous ground of demurrer stated, the court or judge may set aside such demurrer, with costs.

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Grounds of demurrer were previously required both at law and in equity. Application to set aside a demurrer is made by summons.

Time for demurrer.

3. A demurrer shall be delivered in the same manner and within the same time as any other pleading in the action.

A demurrer to a statement of claim must be delivered within eight days, and to a reply within three weeks. (Ord. XXII., Rule 1, p. 175; Ord. XXIV., Rule 1, p. 178.)

Time given for delivery of statement of defence allows the defendant to demur within the limit given. (*Hodges* v. *Hodges*, 2 Ch. D. 112; 45 L. J., Ch. 758; 24 W. R. 293.)

Demurrer to part and defence to rest.

4. A defendant desiring to demur to part of a statement of claim and to put in a defence to the other part, shall combine such demurrer and defence in one pleading. And so in every case where a party entitled to put in a further pleading desires to demur to part of the last pleading of the opposite party he shall combine such demurrer and other pleading.

Demurrer and pleading to same allegation.

5. If the party demurring desires to be at liberty to plead as well as demur to the matter demurred to, he may, before demurring, apply to the court or a judge for an order giving him leave to do so; and the court or judge, if satisfied that there is reasonable ground for the demurrer, may make an order accordingly, or may reserve leave to him to plead after the demurrer is overruled, or may make such other order and upon such terms as may be just.

Sect. 80 of the C. L. P. Act, 1852, gives a similar power to the judge to allow a plea and demurrer to the same matter.

Entry for argument.

6. When a demurrer either to the whole or part of a pleading is delivered, either party may enter the demurrer for argument immediately, and the party so entering such demurrer shall on the same day give notice thereof to the other party. If the demurrer shall not be entered and notice thereof given within ten days after delivery, and if the party

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whose pleading is demurred to does not within such time serve an order for leave to amend, the demurrer shall be held sufficient for the same purposes and with the same result as to costs as if it had been allowed on argument.

Joinder in demurrer is not required. This rule does not provide for the delivery of copies of the pleadings for the use of the court as required by R. G. H. T. 1853, Rule 16, which still seems in force in theory, but is believed to be neglected in practice.

Amendment pending demurrer.

7. While a demurrer to the whole or any part of a pleading is pending, such pleading shall not be amended unless by order of the court or a judge; and no such order shall be made except on payment of the costs of the demurrer.

Costs of demurrer.

8. Where a demurrer to the whole or part of any pleading is allowed upon argument, the party whose pleading is demurred to shall, unless the court otherwise order, pay to the demurring party the costs of the demurrer.

Costs on successful demurrer to whole claim.

9. If a demurrer to the whole of a statement of claim be allowed, the plaintiff, subject to the power of the court to allow the statement of claim to be amended, shall pay to the demurring defendant the costs of the action, unless the court shall otherwise order.

Defendant succeeded on demurrer to statement of claim, leave to amend being given on payment of costs. Amendment made and action set down for trial, but stay ordered until costs paid. Five months after, action dismissed unless plaintiff paid costs within a month. (*White* v. *Bromige*, 26 W. R. 312.)

Striking out of matter demurred to.

10. Where a demurrer to any pleading or part of a pleading is allowed in any case not falling within the last preceding rule, then (subject to the power of the court to allow an amendment) the matter demurred to shall as between the parties to the demurrer be deemed to be struck out of the pleadings, and the rights of the parties shall be the same as if it had not been pleaded.

For the effect of default in pleading and the rights of the parties thereon, see the next Order (XXIX.).

Costs on unsuccessful demurrer.

11. Where a demurrer is overruled the demurring party shall pay to the opposite party the costs occasioned by the demurrer, unless the court shall otherwise direct.

Pleading over after successful demurrer.

12. Where a demurrer is overruled the court may make such order and upon such terms as to the court shall seem right for allowing the demurring party to raise by pleading any case he may be desirous to set up in opposition to the matter demurred to.

See *Bell* v. *Wilkinson* (C. A.), 26 W. R. 275.

13. A demurrer shall be entered for argument by delivering to the proper officer a memorandum of entry in the Form No. 29* in Appendix (C.).

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*Demurrers to be argued before single Judge.*] Demurrers in the Queen's Bench, Common Pleas and Exchequer Divisions were, until recently, argued before a divisional court, as standing in the place of the former court in banc (see Act of 1873, sect. 41, p. 38, *ante*); but by the Rules of the Supreme Court of December, 1876, it appears that demurrers are now in those divisions to be heard before a single judge, as has long been the practice in the Court of Chancery, and later in the Chancery Division, as demurrer is not one of the matters reserved for a divisional court under those rules. (See Ord. LVIIA., p. 255, *post*.)

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## ORDER XXIX.

### DEFAULT OF PLEADING.

1. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the court or a judge to dismiss the action with costs, for want of prosecution; and on the hearing of such application the court or judge may, if no statement of claim have been delivered, order the action to be dismissed accordingly, or may make such other order on such terms as to the court or judge shall seem just.

Dismissal of action for want of prosecution.

The plaintiff is not bound to deliver a statement of claim when the defendant dispenses with it on appearance. (Ord. XXI., Rule 1.) In that case the defendant cannot take advantage of this rule, or apply to have the action dismissed. His only course will be, if he wish to have the matter disposed of, to give notice of trial under Ord. XXXVI., Rule 4, p. 206. The practice under this rule is substituted for judgment of *non pros.* at law (see 13 Car. 2, st. 2, c. 2), after notice to declare (C. L. P. Act, 1852, sect. 53), and dismissal of bill for want of prosecution in equity. Like judgment of *non pros.*, the dismissal of a bill for want of prosecution was no bar to another suit. (*Brandlyn* v. *Ord*, 1 Atk. 571.) There is nothing in this rule to show that a different effect is intended on the dismissal of an action for want of prosecution.

When the action had been dismissed for want of prosecution, it was held that the court had no jurisdiction to hear an application by the plaintiff to set aside the appearance of the defendant under the Bills of Exchange Act. (*Whistler* v. *Hancock*, 3 Q. B. D. 83; 47 L. J., Q. B. 152; 37 L. T. 639; 26 W. R. 211.) On the other hand, where the action had been dismissed for want of prosecution, unless some step was taken within a certain time, an application to enlarge the time for appealing from the order dismissing the action was entertained, although the time had elapsed. (*Burke* v. *Rooney*, 4 C. P. D. 226; 48 L. J., C. P. 611; 27 W. R. 915.) In *King* v. *Davenport* (4 Q. B. D. 402; 48 L. J., Q. B. 606; 27 W. R. 789), an application to extend the time to take a step which would save a dismissal for want of prosecution was not entertained. These cases appear to rest on rather fine distinctions, but the proper course to take, while the authorities remain in their present state, is to apply for an extension of time to appeal, and to appeal against the order dismissing the action. (See *Carter* v. *Stubbs* (C. A.), 6 Q. B. D. 116; 50 L. J., Q. B. 161.)

A week's further time given to plaintiff, he paying costs of motion. (*Higginbotham* v. *Aynsley*, 1 Ch. D. 218; 24 W. R. 782.)

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Direction given to serve notice of motion to dismiss on trustee in bankruptcy of plaintiff who has failed to deliver statement of claim and become bankrupt. (*Wright* v. *Swindon, &c. Rail. Co.*, 4 Ch. D. 164; 46 L. J., Ch. 199.)

A defendant cannot practically extend this rule to a failure of delivery of reply by moving for judgment under Ord. XL., Rule 11, p. 223, when he has alleged a good defence and the plaintiff has failed to reply to it. (*Litton* v. *Litton*, 3 Ch. D. 793; 46 L. J., Ch. 64; 24 W. R. 962.)

Default by defendant in action of debt.

2. If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, within the time allowed for that purpose, deliver a defence or demurrer, the plaintiff may, at the expiration of such time, enter final judgment for the amount claimed with costs.

If the defendant dispense with a statement of claim, there is no obligation on him to deliver a statement of defence. (Ord. XXII., Rules 1 and 2.) The plaintiff can only in these circumstances give notice of trial.

This rule does not apply to an Admiralty action *in rem*. (*The Sfactoria*, 35 L. T. 431; 25 W. R. 62.)

Where one of several defendants makes default.

3. When in any such action as in the last preceding rule mentioned there are several defendants, if one of them make default as mentioned in the last preceding rule, the plaintiff may enter final judgment against the defendant so making default, and issue execution upon such judgment without prejudice to his right to proceed with this action against the other defendants.

See Ord. XIII., Rule 4, and note.

Judgment may be entered under this rule against a husband in an action against husband and wife, when the defence, though nominally joint, is really only that of the wife. (*Jenkins* v. *Davies*, 1 Ch. D. 696; 24 W. R. 690.)

Default by defendant in action for unliquidated damages.

4. If the plaintiff's claim be for detention of goods and pecuniary damages, or either of them, and the defendant makes default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant, and a writ of inquiry shall issue to assess the value of the goods, and the damages, or the damages only, as the case may be. But the court or a judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way in which any question arising in an action may be tried.

Where the penalty is claimed on a replevin bond, final judgment should be signed on default under Rule 2, not interlocutory judgment. (*Dix* v. *Groom*, 5 Ex. D. 91; 49 L. J., Ex. 430.)

Where one of several defendants makes default.

5. When in any such action as in Rule 4 mentioned there are several defendants, if one of them make default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant so making default, and proceed with his action against the others. And in such case,

damages against the defendant making default shall be assessed at the same time with the trial of the action or issues therein against the other defendants, unless the court or a judge shall otherwise direct.

Claim sounding in debt and damages.

6. If the plaintiff's claim be for a debt or liquidated demand, and also for detention of goods and pecuniary damages, or pecuniary damages only, and the defendant makes default as mentioned in Rule 2, the plaintiff may enter final judgment for the debt or liquidated demand, and also enter interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in Rule 4.

In action for recovery of land.

7. In an action for the recovery of land, if the defendant makes a default as mentioned in Rule 2, the plaintiff may enter a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land, with his costs.

Mesne profits.

8. Where the plaintiff has endorsed a claim for mesne profits, arrears of rent, or damages for breach of contract upon a writ for the recovery of land, if the defendant makes default as mentioned in Rule 2, or, if there be more than one defendant, some or one of the defendants make such default, the plaintiff may enter judgment against the defaulting defendant or defenants, and proceed as mentioned in Rules 4 and 5.

In probate actions.

9. In probate actions, if any defendant make default in filing and delivering a defence or demurrer, the action may proceed, notwithstanding such default.

In these actions, the object being to obtain proof in solemn form, the plaintiff would not be satisfied with anything like judgment by default, which could only amount to a grant of probate in common form.

In other cases, motion for judgment.

10. In all other actions than those in the preceding rules of this order mentioned, if the defendant makes default in delivering a defence or demurrer, the plaintiff may set down the action on motion for judgment, and such judgment shall be given as upon the statement of claim the court shall consider the plaintiff to be entitled to.

Jessel, M. R., has expressed an opinion that no notice need be given of a motion to be made under this rule. (*Gillott* v. *Kerr*, 24 W. R. 428.) Hall, V.-C., however, ordered in *Roupell* v. *Parsons* (34 L. T. 56; 24 W. R. 269), that two days' notice should be given. In *Bowen* v. *Bowen* (24 W. R. 246), before the same learned judge, the defendant having made default, and the action being set down, an order was by consent made as in any ordinary motion. As to advancing motions under this rule, see *Meakin* v. *Sykes*, 24 W. R. 293. Motion under Ord. XL. r. 11, against defendants on admissions in defence and motion in default against two other defendants in the same action allowed. (*Parsons* v. *Harris*, 6 Ch. D. 694; 25 W. R. 410.) Pending suit ordered to come under the

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Judicature practice with a view to this rule. (*Provident Permanent Building Society* v. *Greenhill*, 1 Ch. D. 624; 45 L. J., Ch. 272.)

The practice under this rule applied to "short causes" in the Chancery Division. (*Palin* v. *Brookes*, 33 L. T. 332; 24 W. R. 20.)

Where one of several defendants makes default.

11. Where, in any such action as mentioned in the last preceding rule, there are several defendants, then, if one of such defendants make such default as aforesaid, the plaintiff may either set down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants.

See *Bridson* v. *Smith*, 24 W. R. 392.

Close of pleadings by default.

12. If the plaintiff does not deliver a reply or demurrer, or any party does not deliver any subsequent pleading, or a demurrer, within the period allowed for that purpose, the pleading shall be deemed to be closed at the expiration of that period, and the statements of fact in the pleading last delivered shall be deemed to be admitted.

The next step to be taken is to enter the action for trial.

Default by third party.

13. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the court or a judge for such judgment, if any, as upon the pleadings he may appear to be entitled to. And the court may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties.

Setting aside judgment by default.

14. Any judgment by default, whether under this order or under any other of these rules, may be set aside by the court or a judge, upon such terms as to costs or otherwise as such court or judge may think fit.

An application to set aside a judgment may, as under the former practice, be made by summons.

Judgment on default at trial set aside on paying costs of day and application. (*Cockle* v. *Joyce*, 25 W. R. 59.) This is in general a matter of course. (*Burgoine* v. *Taylor* (C. A.), 9 Ch. D. 1; 47 L. J., Ch. 542; 38 L. T. 438; 26 W. R. 568.) Extension of time to apply to set aside judgment granted. (*Mitchell* v. *Wilson*, 25 W. R. 380.) Judgment set aside where plaintiff's solicitor, thinking a settlement probable, deferred instructing counsel. (*Wright* v. *Clifford*, 47 L. J., Ch. 543; 26 W. R. 369.) Judgment set aside by the Court of Appeal on payment of all costs thrown away, including costs before the Divisional Court itself. (*King* v. *Sandeman* (C. A.), 38 L. T. 461; 26 W. R. 569.) Judgment against wife on promissory note of herself and husband for advance to husband set aside after considerable delay. (*Atwood* v. *Chichester* (C. A.), 3 Q. B. D. 722; 47 L. J., Q. B. 300; 38 L. T. 48; 26 W. R. 320.) When the judgment is by consent it can only be set aside on the same grounds as an agreement. (*Att.-Gen.* v. *Tomline*, 7 Ch. D. 388; 47 L. J., Ch. 473.) Judgment of foreclosure against mortgagor's heir set aside; action dismissed without costs at instance of plaintiff, there being no evidence of heirship. (*Lancaster Banking Company* v. *Cooper*, 9 Ch. D. 594; 27 W. R. 164.)

## ORDER XXX.

### Payment into Court in Satisfaction.

1. Where any action is brought to recover a debt or damages, any defendant may at any time after service of the writ, and before or at the time of delivering his defence, or by leave of the court or a judge at any later time, pay into court a sum of money by way of satisfaction or amends. Payment into court shall be pleaded in the defence, and the claim or cause of action in respect of which such payment shall be made shall be specified therein. Time for payment into court.

The exceptions of assault, false imprisonment, defamation, malicious prosecution and seduction, contained in sect. 70 of C. L. P. Act, 1872, as actions in which money could not be paid into court, are not reproduced in this rule. A defendant in an action of libel in a newspaper may pay into court under this rule, or, under 6 & 7 Vict. c. 96, s. 2, adding that the libel was inserted without malice or negligence and was followed by an apology. By C. L. P. Act, 1860, s. 25, payment into court may be made in an action of detinue; but where the return of a specific chattel only is claimed, there is no action for pecuniary damages within this rule. Payment into court and justification of libel allowed together. (*Hawkesley* v. *Bradshaw* (C. A.), 5 Q. B. D. 302; 49 L. J., Q. B. 333.) The payment need not be distributed among the items of the claim. (*Paraire* v. *Loibl*, 49 L. J., C. P. 481.)

The following order was posted at the Judges' Chambers, in Serjeants' Inn, on November 12th, 1875:—"As money may now be paid into court without leave after service of the writ and before defence (Ord. XXX., Rule 2), summonses to stay on payment of a smaller sum than the sum demanded will no longer be issued. Instead thereof the amount shall be paid into court, and the copy of the receipt sent to the plaintiff's solicitor."

2. Such sum of money shall be paid to the proper officer, who shall give a receipt for the same. If such payment be made before delivering his defence the defendant shall thereupon serve upon the plaintiff a notice that he has paid in such money, and in respect of what claim, in the Form No. 5* in Appendix (B.) hereto. Notice of payment.

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3. Money paid into court as aforesaid may, unless otherwise ordered by a judge, be paid out to the plaintiff, or to his solicitor on the written authority of the plaintiff. No affidavit shall be necessary to verify the plaintiff's signature to such written authority unless specially required by the officer of the court. Payment out to plaintiff.

This rule is taken from R. G. H. T. 1853, Rule 11.

4. The plaintiff, if payment into court is made before delivering a defence, may within four days after receipt of notice of such payment, or if such payment is first stated in a defence delivered then may before reply, accept the same in satisfaction of the causes of action in respect of which it is paid in; in which case he shall give notice to the defendant in the Notice to defendant of acceptance. Four days.

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Forty-eight hours.

Form No. 6* in Appendix (B.) hereto, and shall be at liberty, in case the sum paid in is accepted in satisfaction of the entire cause of action, to tax his costs, and, in case of non-payment within forty-eight hours, to sign judgment for his costs so taxed.

Except the notice of payment into court, this rule is substantially identical with sect. 73 of C. L. P. Act, 1852.

In *Langridge* v. *Campbell* (2 Ex. D. 281; 46 L. J., Ex. 277; 36 L. T. 64; 25 W. R. 351), it was held that a plaintiff had a vested right to his costs on taking out the money in satisfaction of that claim; but in *Buckton* v. *Higgs* (4 Ex. D. 174; 40 L. T. 755; 27 W. R. 803), it was considered that there was a discretion under Ord. LV., although the costs were given to the plaintiff up to the payment into court and to the defendant who succeeded at the trial afterwards. So also in *Gretton* v. *Mees*, 7 Ch. D. 839; 38 L. T. 506; 26 W. R. 607. Where the plaintiff neglected to give notice of acceptance within the four days but gave it afterwards, his costs were given him under Ord. LV. (*Greaves* v. *Fleming*, 4 Q. B. D. 226; 48 L. J., Q. B. 335; 27 W. R. 458.)

## ORDER XXXI.

### DISCOVERY AND INSPECTION.

Interrogatories, delivery of.

Delivery of interrogatories without leave within time, and with leave at any time.

1. The plaintiff may, at the time of delivering his statement of claim, or at any subsequent time not later than the close of the pleadings, and a defendant may, at the time of delivering his defence, or at any subsequent time not later than the close of the pleadings, without any order for that purpose, and either party may at any time, by leave of the court or a judge, deliver interrogatories in writing for the examination of the opposite party or parties, or any one or more of such parties, with a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer: provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose.

Interrogatories and answers in Chancery were filed, and the answers contained a statement of the defendant's case. (See 15 & 16 Vict. c. 86, ss. 12, 14, 19.) The C. L. P. Act, 1854, sect. 51, gave power to administer interrogatories, but only after an order of a judge. The plaintiff has the right to interrogate a third party (*MacAllister* v. *Rochester*, 5 C. P. D. 194; 42 L. T. 481), and so apparently has the defendant.

*Interrogatories before Defence.*] It has been held by the Court of Appeal in *Mercier* v. *Cotton* (1 Q. B. D. 442; 35 L. T. 79; 24 W. R. 566), that when a plaintiff delivers interrogatories before defence, and the defendant applies to have them struck out, it will be for the plaintiff to show that the interrogatories are sufficiently material at that stage of the action. An affidavit by a defendant that he has no means of framing his defence until interrogatories answered has been held not to entitle the defendant to interrogate before defence. (Per Jessel, M. R., in *Disney* v. *Longbourne*, 2 Ch. D. 704; 45 L. J., Ch. 532; 35 L. T. 301; 24 W. R. 663.) (See also *Beal* v. *Pilling*, 38 L. T. 486, and for an allowance before defence *Harbord* v. *Monk*, 9 Ch. D. 616.)

*Admiralty.*] Interrogatories will not be allowed before the close of

the pleadings in an admiralty action for collision, when the interrogatories go to matters which will be disclosed by the Preliminary Act. (*The Biola*, 34 L. T. 185; 24 W. R. 524.)

Leave given after close of pleadings. (*London, &c. Co.* v. *Davies*, 5 Ch. D. 775.)

Costs of improperly interrogating.

2. The court in adjusting the costs of the action shall at the instance of any party inquire or cause inquiry to be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing master or of the court or judge that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

This rule is rendered necessary by the general permission given to parties to interrogate, which formerly at law required an order.

Form.

3. Interrogatories may be in the Form No. 7* in Appendix (B.) hereto, with such variations as circumstances may require.

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Interrogating officer of corporation.

4. If any party to an action be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply at chambers for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.

Sect. 51 of C. L. P. Act, 1854, provided in the same way for this case. Formerly, in Chancery, a corporation put in their answer under their common seal. (Ch. C. Ord. XV., 6.) All answers must now be by affidavit. It is doubtful whether this rule applies to discovery of documents, but sect. 50 of the C. L. P. Act, 1854, which does so apply, may be read in aid of it. It has been held, by Malins, V.-C., that the officer of a company ordered to be wound up may be interrogated under this rule. (*In re Alexandra Palace Co.*, 50 L. J., Ch. 7.) An officer of a corporation made a party, for purposes of discovery, struck out. (*Wilson* v. *Church*, 9 Ch. D. 552; 39 L. T. 413; 26 W. R. 735.) The officer is not entitled to his costs before answering. (*Berkeley* v. *Standard Discount Co.*, 13 Ch. D. 97; 49 L. J., Ch. 1.) If he is also solicitor of the party, privilege cannot be claimed. (*Swansea* v. *Quirk*, 5 C. P. D. 106; 49 L. J., C. P. 157.)

*Application to strike out interrogatories.*

*Four days.*

5. [*Any party called upon to answer interrogatories, whether by himself or by any member or officer, may, within four days after service of the interrogatories, apply at chambers to strike out any interrogatory, on the ground that it is scandalous or irrevelant, or is not put bond fide for the purposes of the action, or that the matter inquired after is not sufficiently material at that stage of the action, or on any other ground. And the judge, if satisfied that any interrogatory is objectionable, may order it to be struck out.* Annulled by R. S. C., November, 1878, Rule 3, p. 567.]

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Objection to answer.

5*a*. Any objection to answering any one or more of several interrogatories on the ground that it or they is or are scandalous or irrelevant, or not bonâ fide for the purpose of the action, or that the matters inquired into are not sufficiently material at that stage of the action, or on any other ground, may be taken in the affidavit in answer.

Application to strike out.

An application to set aside the interrogatories on the ground that they have been exhibited unreasonably or vexatiously, or to strike out any interrogatory or interrogatories on the ground that it or they is or are scandalous, may be made at chambers within four days after service of the interrogatories (*h*).

By this rule, the only grounds on which interrogatories may be objected to by summons are that they are unreasonable, vexatious or scandalous, thus much narrowing the effect of the rule previously in force, which allowed them to be struck out on similar grounds to these, or "on any other ground." The grounds of objection, however, which may be taken on the affidavit in answer are as wide as before. If the interrogating party does not accept the objection, his course is to apply for a further answer under Rule 9. Interrogatories allowed as to time, &c. of consent pleaded to a breach of covenant, but as to the persons present refused (*Eade* v. *Jacobs* (C. A.), 3 Ex. D. 335; 47 L. J., Ex. 74; 37 L. T. 621; 26 W. R. 159); allowed as to grounds of property alleged to be worthless (*Ashley* v. *Taylor* (C. A.), 38 L. T. 44); allowed as to plaintiffs' misconduct justifying dismissal (*Saunders* v. *Jones*, 7 Ch. D. 435; 47 L. J., Ch. 440. See also *Lyon* v. *Tweedell*, 13 Ch. D. 375); as to defendants' credit disallowed. (*Allhusen* v. *Labouchere* (C. A.), 3 Q. B. D. 654; 47 L. J., Q. B 819; 39 L. T. 207; 27 W. R. 12.) When the answer would tend to criminate the objection must be taken in the answer, not by summons. (*Fisher* v. *Owen* (C. A.), 8 Ch. D. 645; 47 L. J., Ch. 681; 38 L. T. 577; 26 W. R. 581). *Atherley* v. *Harvey* (2 Q. B. D. 524; 46 L. J., Q. B. 508; 36 L. T. 551; 25 W. R. 727), as to publication of libel, seems now not law. As to liability of defendant as partner, *John* v. *James*, 13 Ch. D. 370. As to sale on commission, *Rowcliffe* v. *Leigh*, 6 Ch. D. 256. As to reasonableness of price of horses, *Steward* v. *Lonsdale*, 5 C. P. D. 47. As to quantities of goods sold, &c., see *Saunders* v. *Jones* (C. A.), 7 Ch. D. 435; 47 L. J., Ch. 440, and *Benbow* v. *Low* (C. A.), 16 Ch. D. 93; 50 L. J., Ch. 35. The party may leave objectionable interrogatories unanswered. (*Smith* v. *Bery*, 36 L. T. 471; 25 W. R. 606.)

Answer in ten days.

6. Interrogatories shall be answered by affidavit, to be filed within ten days, or within such other time as a judge may allow.

Answer to be printed.

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7. An affidavit in answer to interrogatories shall, unless otherwise ordered by a judge, if exceeding ten (*i*) folios, be printed, and may be in the Form No. 8* in Appendix (B.) hereto, with such variations as circumstances may require.

This will apply if the ten folios be exceeded by a schedule, not being an exhibit. (*Webb* v. *Bomford*, S. J., Dec. 23, 1876, p. 148.)

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(*h*) Substituted for Rules 5 and 8 by R. S. C., November, 1878, r. 3, p. 567.

(*i*) Altered from "three" by R. S. C., June, 1876, r. 11, p. 561.

8. [*Any objection to answering any interrogatory may be taken, and the ground thereof stated in the affidavit* (*k*).] *Ord.* XXXI.

Sufficiency of answer, determination of.

9. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the court or a judge, on motion or summons.

Failure to answer.

10. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the court or a judge for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer, or answer further, either by affidavit, or by viva voce examination, as the judge may direct.

The application under this rule should be made at chambers in the Chancery Division as well as in the other divisions, and the summons should specify the answers in question. (*The Chesterfield and Boythorpe Colliery Co.* v. *Black*, 24 W. R. 783; *Ansley* v. *North, &c. Co.*, 11 Ch. D. 439; 48 L. J., Ch. 776.)

Production of documents on oath.

11. It shall be lawful for the court or a judge, at any time during the pendency therein of any action or proceeding, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such action or proceeding, as the court or judge shall think right; and the court may deal with such documents, when produced, in such manner as shall appear just.

This rule is derived from 15 & 16 Vict. c. 86, s. 18, but that section only applied on the application of the plaintiff, and the 20th section, which was in favour of defendants, only gave power to require the plaintiff to produce documents after the defendant had answered. "Production on oath" is not a very precise phrase, but seems to mean discovery on oath and production.

Discovery of documents.

12. Any party may, without filing any affidavit, apply to a judge for an order directing any other party to the action to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question in the action.

The application under this rule must be by summons, and an affidavit may be required by the judge. (*Johnson* v. *Smith*, 36 L. T. 741; 25 W. R. 539.) When a case has been referred the court and not the referee makes the order for production. (*Rowcliffe* v. *Leigh*, 46 L. J., Ch. 60; 25 W. R. 56.) No particular document need be named, nor need the nature of the documents be stated; but discovery will not be granted unless the documents are such as are allowed to be inspected. Discovery has been granted after issue joined. Generally the plaintiff will not have dis-

(*k*) Annulled by R. S. C., Nov. 1878, r. 3, and replaced by r. 5*a*, *supra*.

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covery before defence (*Hancock* v. *Guerin*, 4 Ex. D. 3); but it has been allowed before defence (*Union Bank* v. *Manby*, 13 Ch. D. 239; 49 L. J., Ch. 127); disallowed before claim. (*Cashin* v. *Craddock*, 2 Ch. D. 140; 34 L. T. 52; *Phillips* v. *Phillips*, 40 L. T. 815.)

A judge has no discretion as to documents liable to be discovered, but his decision is final as to any documents submitted to him by consent. (*Bustros* v. *White*, *infra*.) In a petition of right the suppliant cannot have discovery, but the Crown can. (*Tomline* v. *Reg.* (C. A.), 4 Ex. D. 252; 48 L. J., Ex. 453.) The affidavit may be required from a next friend (*Higginson* v. *Hall*, 10 Ch. D. 235; 48 L. J., Ch. 250), and from one defendant by another. (*Kennedy* v. *Wakefield*, 39 L. J., Ch. 827.) As to discovery in the case of a sovereign state, see *Costa Rica* v. *Erlanger* (C. A.), 1 Ch. D. 171; 45 L. J., Ch. 145.

Affidavit of documents to specify objections.

* Page 300.

13. The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which, if any, of the documents therein mentioned he objects to produce, and it may be in the Form No. 9* in Appendix (B.) hereto, with such variations as circumstances may require.

Even documents of title must be named. (*New British, &c. Co.* v. *Peard*, 3 C. P. D. 196.) No document is privileged from production on the ground of professional privilege, unless it be a communication from the party's solicitor, or from an agent employed by or at the instance of such solicitor. (*Bustros* v. *White* (C. A.), 1 Q. B. D. 422; 45 L. J., Q. B. 642; 34 L. T. 835; 24 W. R. 721. See, too, *Anderson* v. *Bank of British Columbia* (C. A.), 2 Ch. D. 644; 45 L. J., Ch. 449; 24 W. R. 624; and *English* v. *Tottie*, 1 Q. B. D. 141; 45 L. J., Q. B. 138.) As to professional communications, see further *Southwark, &c. Co.* v. *Quick* (C. A.), 3 Q. B. D. 315; 47 L. J., Q. B. 258; *Friend* v. *L. C. & D. Rail. Co.* (C. A.), 2 Ex. D. 437; 46 L. J., Ex. 696; *M'Corquodale* v. *Bell*, 1 C. P. D. 471; 45 L. J., C. P. 329; *The Theodor Korner*, 3 Adm. D. 162; 47 L. J., Ad. 85. As to documents in previous action, see *Hutchinson* v. *Glover*, 1 Q. B. D. 138; 45 L. J., Q. B. 120; and *Bullock* v. *Corry*, 3 Q. B. D. 356; 47 L. J., Q. B. 352.

The objection that a document would criminate must be made on oath. (*Webb* v. *East*, 5 Ex. D. 23; 49 L. J., Ex. 250.)

As to identification of documents claimed as privileged, see *Taylor* v. *Batten*, 4 Q. B. D. 85; 48 L. J., Q. B. 72.

The grounds of the privilege claimed must be verified. (*Gardner* v. *Irvin*, 4 Ex. D. 49; 48 L. J., Ex. 223.)

Inspection of documents referred to in pleading.

14. Every party to an action or other proceeding shall be entitled, at any time before or at the hearing thereof, by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take such copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such action or proceeding, unless he shall satisfy the court that such document relates only to his own title, he being a defendant to the action, or that he had some other sufficient cause for not complying with such notice.

15. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in the Form No. 10 * in Appendix (B.) hereto. *Ord.* XXXI.

* Page 301.

16. The party to whom such notice is given shall, within two days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in Rule 13, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same a notice, stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, and stating which, if any, of the documents he objects to produce, and on what ground. Such notice may be in the Form No. 11† in Appendix (B.) hereto, with such variations as circumstances may require. Fixing of time for inspection. Notice.

† Page 302.

17. If the party served with notice under Rule 15 omits to give such notice of a time for inspection, or objects to give inspection, the party desiring it may apply to a judge for an order for inspection. Order for inspection.

18. Every application for an order for inspection of documents shall be to a judge. And except in the case of documents referred to in the pleadings or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. Application for inspection in other cases by affidavit.

19. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the court or a judge may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action, or that for any other reason it is desirable that any issue or question in dispute in the action should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection. Reservation of question.

This was done in *Wood* v. *The Anglo-Italian Bank*, 34 L. T. 255.

20. If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, Disobedience of order.

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he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended; and the party interrogating may apply to the court or a judge for an order to that effect, and an order may be made accordingly.

Under sect. 51 of the C. L. P. Act, 1854, was a contempt of court, but no power was given to strike out the pleading of the party in contempt. Where the party is out of the jurisdiction, this new liability may be usefully taken advantage of to compel an answer.

*What cases Rule refers to.*] This rule does not apply to a case of disobedience to an order for the names of partners under Ord. XVI., Rule 10, or for accounts under Ord. XV., Rule 1. (*Pike* v. *Keene*, 35 L. T. 341; 24 W. R. 322.)

Foundation for attachment.

21. Service of an order for discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

Attachment of solicitor.

22. A solicitor upon whom an order against any party for discovery or inspection is served under the last rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to attachment.

Use at trial of answers to interrogatories.

23. Any party may, at the trial of an action or issue, use in evidence any one or more of the answers of the opposite party to interrogatories without putting in the others: provided always, that in such case the judge may look at the whole of the answers, and if he shall be of opinion that any other of them are so connected with those put in that the last-mentioned answers ought not to be used without them, he may direct them to be put in.

## ORDER XXXII.

### ADMISSIONS.

Notice of admission of facts.

1. Any party to an action may give notice, by his own statement or otherwise, that he admits the truth of the whole or any part of the case stated or referred to in the statement of claim, defence or reply of any other party.

If a party deny or refuse to admit what he ought to have admitted, a special order may be made as to extra costs occasioned thereby (Ord. XXII., Rule 4). Allegations in the opposite party's pleading not denied or stated to be not admitted are taken to be admitted (Ord. XIX., Rule 17).

2. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the action may be, unless at the hearing or trial the court certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

Notice to admit documents.

Substantially identical with C. L. P. Act, 1852, sect. 117; and see R. G. H. T. 1853, which extended that section to "writs of inquiry and inquisitions of any kind." The Chancery Amendment Act (21 & 22 Vict. c. 27), s. 7, has a similar provision.

3. A notice to admit documents may be in the Form No. 12* in Appendix (B.) hereto.

Form.

* Page 302.

4. An affidavit of the solicitor or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents, and annexed to the affidavit, should be sufficient evidence of such admissions.

Evidence of admission.

## ORDER XXXIII.

### INQUIRIES AND ACCOUNTS.

The court or a judge may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for, or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

Preliminary accounts and inquiries.

This rule is upon a similar subject with Ch. C. Ord. XX., which it considerably extends.

As to the cases in which an order under this rule will be made, see *Turquand* v. *Wilson*, 1 Ch. D. 85; 45 L. J., Ch. 104.

## ORDER XXXIV.

### QUESTIONS OF LAW.

1. The parties may, after the writ of summons has been issued, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the court

Special case by agreement.

*Ord.* XXXIV.

to decide the questions raised thereby. Upon the argument of such case the court and the parties shall be at liberty to refer to the whole contents of such documents, and the court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial.

Court may draw inferences.

This rule chiefly follows the equity practice under Turner's Act, 13 & 14 Vict. c. 35 (now no longer in use, see Rule 7, *infra*), the words of which are in the most material parts re-enacted, but under which a special case might be stated without the filing of any bill. It will be necessary to issue a writ before proceeding under this rule. At law it was necessary before stating "a case without pleadings," under the C. L. P. Act, 1852, sect. 46, to obtain the order of a judge, which is now dispensed with.

The case can only be stated with reference to questions arising in the action. As to special case embodying declarations to be supplemented by motion for judgment, see *Harrison* v. *Cornwall, &c. Co.*, 49 L. J., Ch. 834.

Special case by order.

2. If it appear to the court or a judge, either from the statement of claim or defence or reply or otherwise, that there is in any action a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a referee or an arbitrator, the court or judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the court, either by special case or in such other manner as the court or judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

This rule seems intended to apply to such questions of law as may be stated theoretically in a few words, and not to apply to a detailed statement of facts upon which the opinion of the court is desired, and which is provided for by the preceding rule. Issues of law may, it seems, be settled before a judge, just as issues of fact are settled under Ord. XXVI.

An order may be made after appearance, but before statement of claim, upon an affidavit that no facts are in dispute. (*Metropolitan Board of Works* v. *New River Co.* (C. A.), 2 Q. B. D. 67; 46 L. J., Q. B. 183; 35 L. T. 589; 25 W. R. 175.)

Questions necessarily arising in the action only can be raised on the case. (*Bolivia* v. *Bolivian Navigation Co.*, 24 W. R. 361.) Questions affecting persons not in esse which might never arise not allowed to be stated. (*Bright* v. *Tyndall*, 4 Ch. D. 189; 25 W. R. 109.) A preliminary question of law decided first at the trial. (*Pooley* v. *Driver*, 5 Ch. D. 458; 46 L. J., Ch. 466; 36 L. T. 791; 25 W. R. 62.)

All special cases to be printed.

3. Every special case shall be printed by the plaintiff, and signed by the several parties or their solicitors, and shall be filed by the plaintiff. Printed copies for the use of the judges shall be delivered by the plaintiff.

This rule dispenses with the signature of counsel required, before the act, in equity by 13 & 14 Vict. c. 35, s. 10, but not at law.

4. No special case in an action to which a married woman, infant, or person of unsound mind is a party shall be set down for argument without leave of the court or a judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true. Where married woman party.

The persons named in this rule will be bound by the statements in the case upon leave being given to set it down for argument. (See 13 & 14 Vict. c. 35, ss. 11, 13, upon which the rule is moulded.)

5. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the Form No. 13* in Appendix (B.) hereto, and also if any married woman, infant, or person of unsound mind be a party to the action, producing a copy of the order giving leave to enter the same for argument. Entry of case for argument.

* Page 302.

6. The parties to a special case may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, that on the judgment of the court being given in the affirmative or negative of the question or questions of law raised by the special case, a sum of money, fixed by the parties, or to be ascertained by the court, or in such manner as the court may direct, shall be paid by one of the parties to the other of them, either with or without costs of the action, and the judgment of the court may be entered for the sum so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed on appeal (*k*). Agreement as to payment of money and costs.

7. This order shall apply to every special case stated in an action, or in any proceeding incidental to an action, No special case shall hereafter be stated under the act 13 & 14 Vict. c. 35 (*k*). Application of order, &c.

## ORDER XXXV.

### Proceedings in District Registries.

[1. *Jurisdiction down to entry for trial.* Annulled by R. S. C., June, 1876, Rule 12, p. 561, and replaced by Rule 1*a*, infra.]

1*a*. Where an action proceeds in the district registry, all proceedings, except where by any of the rules of the Supreme Court it is otherwise provided, or the court or a judge shall Jurisdiction of district registry down to final judgment.

(*k*) Added by R. S. C., April, 1880, Rules 6 and 7, p. 573.

*Ord.* XXXV.

otherwise order, shall be taken in the district registry, down to and including final judgment, and every final judgment and every order for an account by reason of the default of the defendant or by consent shall be entered in the district registry in the proper book, in the same manner as a like judgment or order in an action proceeding in London would be entered in London.

Where the writ of summons is issued out of a district registry and the plaintiff is entitled to enter interlocutory judgment under Order XIII., Rule 6,* or where the action proceeds in the district registry and the plaintiff is entitled to enter interlocutory judgment under Order XXIX., Rule 4 or 5,† in either case such interlocutory judgment, and when damages shall have been assessed, final judgment, shall be entered in the district registry, unless the court or judge shall otherwise order.

* Page 147.

† Page 186.

Entry of final judgment in district registry.

Where an action proceeds in the district registry, final judgment shall be entered in such registry, unless the judge at the trial or the court or a judge shall otherwise order

Actions in the Queen's Bench, *Common Pleas and Exchequer* Divisions shall be entered for trial with the associates and not in the district registries (*k*).

An action proceeds in the district registry when the writ is issued there (see Ord. V., Rule 1), and all the defendants appear there, except those who make default in appearance. The plaintiff may choose any district registry he pleases, but the defendant is not bound to appear, unless he either resides or carries on business within the district. (See Ord. V., Rule 12.) This rule repeats the greater portion of sect. 64 of the Act of 1873, but substitutes "final judgment" for "entry for trial," which was the point at which proceedings in the district registry were to stop, both under that section and the original rule, under which it had been held that accounts and inquiries could not be taken in a district registry except by order of the court or a judge; and that a decree could not be made by a district registrar even by consent, unless on a default of a defendant. (*Irlam* v. *Irlam*, 2 Ch. D. 608; 24 W. R. 949; see also *Brassington* v. *Cussons*, 24 W. R. 881.) The 2nd and 3rd paragraphs of the present rule are taken verbatim from the original rule; the last paragraph is new. (As to the area over which the jurisdiction of each district registry extends, see "Orders in Council," II., and note, p. 428.)

1*b*. So much of Order XXXV., Rule 1*a*, as directs that actions in the Queen's Bench, *Common Pleas, and Exchequer* Divisions shall not be entered for trial in the district registries, is hereby repealed (*l*).

Entry of judgment in London.

2. Subject to the foregoing rules, where an action proceeds in the district registry the judgment and all such orders therein as require to be entered, except orders made by the district

(*k*) Substituted for former Rule 1, by R. S. C., June, 1876, Rule 12, p. 561. As to Common Pleas and Exchequer Divisions, see p. 438, *post*.

(*l*) Added by R. S. C., December, 1879, Rule 3, p. 510.

registrar under the authority and jurisdiction vested in him under these rules, shall be entered in London, and an office copy of every judgment and order so entered shall be transmitted to the district registry to be filed with the proceedings in the action.

Issue of execution from registry.

3. Where an action proceeds in the district registry all writs of execution for enforcing any judgment or order therein shall issue from the district registry, unless the court or a judge shall otherwise direct. Where final judgment is entered in the district registry costs shall be taxed in such registry unless the court or a judge shall otherwise order.

Proceedings necessary or incidental to judgment.

3*a*. Where an action proceeds in a district registry, all proceedings relating to the following matters, namely,—

(*a*.) Leave to issue or renew writs of execution;

(*b*.) Examination of judgment debtors for garnishee purposes;

(*c*.) Garnishee orders;

(*d*.) Charging orders nisi;

shall, unless the court or a judge otherwise order, be taken in the district registry (*m*).

Jurisdiction of district registrar.

4. Where an action proceeds in a district registry the district registrar may exercise all such authority and jurisdiction in respect of the action as may be exercised by a judge at chambers, except such as by these rules a master of the Queen's Bench, *Common Pleas or Exchequer* Divisions is precluded from exercising.

Semble, that the court has no power to order a receiver to pass accounts in a district registry. (*Walker* v. *Robinson*, 34 L. T. 229; 24 W. R. 427, per Bacon, V.-C.)

As to jurisdiction of a master, see Ord. LIV., Rules 2 and 2*a*.

Procedure as at chambers.

5. Every application to a district registrar shall be made in the same manner in which applications at chambers are directed to be made by these rules.*

* Page 246.

Reference to judge.

6. If any matter appears to the district registrar proper for the decision of a judge, the registrar may refer the same to a judge, and the judge may either dispose of the matter or refer the same back to the registrar with such directions as he may think fit.

Appeal to judge.

7. Any person affected by any order or decision of a district registrar may appeal to a judge. Such appeal may be made

(*m*) Added by R. S. C., April, 1880, Rule 11, p. 574.

*Ord.* XXXV.

Though hearing by consent only.

notwithstanding that the order or decision was in respect of a proceeding or matter as to which the district registrar had jurisdiction only by consent. Such appeal shall be by summons within four days after the decision complained of, or such further time as may be allowed by a judge or the registrar.

Appeal no stay.

8. An appeal from a district registrar shall be no stay of proceedings unless so ordered by a judge or the registrar.

See the same rule as to a master, Ord. LIV., Rule 5, p. 248.

Control of registrar by court.

9. Every district registrar and other officer of a district registry shall be subject to the orders and directions of the court or a judge as fully as any other officer of the court, and every proceeding in a district registry shall be subject to the control of the court or a judge, as fully as a like proceeding in London.

In Chancery Division.

10. Every reference to a judge by or appeal to a judge from a district registrar in any action in the Chancery Division shall be to the judge to whom the action is assigned.

Removal of action from registry by defendant as of right.

11. In any action which would, under the foregoing rules, proceed in the district registry, any defendant may remove the action from the district registry as of right in the cases, and within the times, following:

Four days.

Where the writ is specially indorsed under Order III., Rule 6,* and the plaintiff does not within four days after the appearance of such defendant give notice of an application for an order against him under Order XIV.;† then such defendant may remove the action as of right at any time after the expiration of such four days, and before delivering a defence, and before the expiration of the time for doing so:

* Page 126.

† Page 149.

Where the writ is specially indorsed and the plaintiff has made such application as in the last paragraph mentioned, and the defendant has obtained leave to defend in manner provided by Order XIV.; then such defendant may remove the action as of right at any time after the order giving him leave to defend, and before delivering a defence and before the expiration of the time for doing so:

Where the writ is not specially indorsed any defendant may remove the action as of right at any time after appearance, and before delivering a defence, and before the expiration of the time for doing so.

Admiralty action in rem.

11*a*. In an admiralty action in rem, any person who may

have duly intervened and appeared may remove an action from a district registry as of right (*n*).

Mode of removal.

12. Any defendant desirous to remove an action as of right under the last preceding rule may do so by serving upon the other parties to the action, and delivering to the district registrar, a notice, signed by himself or his solicitor, to the effect that he desires the action to be removed to London, and the action shall be removed accordingly: Provided, that if the court or a judge shall be satisfied that the defendant giving such notice is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such court or judge may order that the action may proceed in the district registry notwithstanding such notice.

Removal by order by either party.

13. In any case not provided for by the last two preceding rules, any party to an action proceeding in a district registry may apply to the court or a judge, or to the district registrar, for an order to remove the action from the district registry to London, and such court, judge, or registrar, may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall seem just.

Removal from London to registry.

Any party to an action proceeding in London may apply to the court or a judge for an order to remove the action from London to any district registry, and such court or judge may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall seem just.

Where a merely formal defendant has appeared in London, the action may have proceeded in the district registry under Ord. XII., Rule 5, p. 142.

*Motion for Judgment by Default.*] When a plaintiff is entitled to set down an action on motion for judgment for the defendant's default under Ord. XXIX., Rule 10, the Chancery Division will only order the document to be sent to London, from the district registry, and then the action may be set down. (*Birmingham Waste Co.* v. *Lane*, 24 W. R. 292. See, however, *Walker* v. *Robinson*, 24 W. R. 137.)

Transmission of documents on removal.

14. Whenever any proceedings are removed from the district registry to London, the district registrar shall transmit to the proper officer of the High Court of Justice all original documents (if any) filed in the district registry, and a copy of all entries in the books of the district registry of the proceedings in the action.

District registrar must account to treasury.

15. Every district registrar shall account for and pay over to the treasury all monies paid into court at the registry of

(*n*) Added by R. S. C., Dec. 1875, Rule 10, p. 556.

*Ords.* XXXV., XXXVI.

which he is registrar, in such manner and at such times as may be from time to time directed by the treasury (*o*).

Application of Rules of April, 1880.

16. (*a.*) So much of Ord. XXXVII., Rule 3,* as requires affidavits to be filed in the central office shall not apply to affidavits required to be filed in a district registry.

(*b.*) Ord. LIV., Rules 7 to 14,† both inclusive, shall not apply to proceedings in district registries.

(*c.*) The forms contained in the schedule to the Rules of the Supreme Court, April, 1880,‡ may, as far as they are applicable, be used in or for the purposes of district registries, with such variations as circumstances require (*p*).

* Page 216.

† Page 248.

‡ Page 581.

## ORDER XXXVI.

### TRIAL.

Place of trial. Abolition of local venue.

1. There shall be no local venue for the trial of any action, but when the plaintiff proposes to have the action tried elsewhere than in Middlesex, he shall in his statement of claim name the county or place in which he proposes that the action shall be tried, and the action shall, unless a judge otherwise orders, be tried in the county or place so named. Where no place of trial is named in the statement of claim, the place of trial shall, unless a judge otherwise orders, be the county of Middlesex. Any order of a judge, as to such place of trial, may be discharged or varied by a divisional court of the High Court.

*Venue.*] The distinction between actions with local venue, that is, those brought for wrongs in respect of real property and transitory actions, thus disappears. For the technical mode of stating the venue in the margin of the declaration (Pl. R. T. T. 1853, Rule 5) is now substituted a proposal of a place of trial at the foot of the statement of claim. (See Form, Appendix (C.), No. 1, p. 310.) Such venue could not be changed, unless by consent, without a special order (R. G. H. T. 1853, Rule 18), the more modern practice being not to change unless the defendant could show a manifest preponderance of convenience in trying the action elsewhere. (*Church* v. *Barnett*, L. R., 6 C. P. 116; 40 L. J., C. P. 138.) It will be observed, that the power for parties to consent to a change of venue is not reserved.

*Local Venue under Special Act.*] It is conceived that where, *e. g.*, by the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), s. 108, a local venue is expressly given by a special act, the right to local venue will survive notwithstanding the general abolition of local venue by this rule. (See *Thorpe* v. *Adams*, L. R., 6 C. P. 128; 40 L. J., M. C. 52.) This rule was apparently framed only to meet cases in which the venue was local at common law.

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(*o*) Added by R. S. C., Dec. 1875, Rule 11, p. 556.

(*p*) Added by R. S. C., May, 1880, Rule 3.

As to the trial of a Chancery action in Middlesex, see *Harris* v. *Gamble*, 7 Ch. D. 877; 47 L. J., Ch. 344; 38 L. T. 253; 26 W. R. 350.

If a plaintiff in the Chancery Division should lay the venue elsewhere than in Middlesex, the action will remain in the court of the judge of that division to whom it was assigned, but the trial will be had before one of the judges of the High Court sitting as Commissioner of Assize. (See *Redmayne* v. *Vaughan*, 24 W. R. 983; and *Wood* v. *Hamblet*, 6 Ch. D. 113; 47 L. J., Ch. 113. See also Act of 1873, sects. 11 (p. 5) and 29 (p. 28), and also Rule 6 of this Order.)

2. Actions shall be tried and heard either before a judge or judges, or before a judge sitting with assessors, or before a judge and jury, or before an official or special referee, with or without assessors. Modes of trial.

At law, actions could, by the C. L. P. Act, 1854, sect. 1, be tried before a judge, but only by consent and with leave of the court. Courts of Equity had a discretion to call in scientific persons by the Chancery Amendment Act, 1852, sect. 42, and to act on their certificate. They might also try or direct a trial by jury under the Chancery Amendment Act, 1858, sect. 3, and the Chancery Amendment Act, 1862, sect. 2. The Court of Admiralty might direct an issue to be tried by jury before a common law judge under the Court of Admiralty Act, 1840, sect. 11, and the Court of Probate under the Court of Probate Act, 1857, sect. 35, had power to order either trial by jury or by the court. The discretion of the Court of Divorce was similar under the Divorce Court Act, 1857, sect. 36, except that by sect. 33 where damages are claimed a jury is indispensable, and the present rules do not affect the divorce practice. Trial by a referee is adopted as a part of the ordinary procedure of the court from the previous practice of referring actions to an arbitrator. Sect. 56 of the Act of 1873 provides for the appointment and remuneration of referees and assessors. Sect. 83 enacts that "permanent official referees" shall be appointed. As to references, see further, sects. 56, 57 of Act of 1873, p. 45, *ante*, and notes thereon.

As to trial by jury in the Chancery Division, see note to sect. 29 of the Act of 1873, p. 28, *ante*.

For the order of proceeding in trials in the Chancery Division, see *Kino* v. *Rudkin*, 6 Ch. D. 160; 38 L. T. 461; *Metzler* v. *Woad* (both cases as to counsel's speeches), 47 L. J., Ch. 139; 26 W. R. 125; *Watson* v. *Rodwell* (C. A.), 11 Ch. D. 150; 48 L. J., Ch. 209; 39 L. T. 614; 27 W. R. 265, as to putting in documents and marking them; *Bigsby* v. *Dickinson*, 4 Ch. D. 24; 46 L. J., Ch. 280; 35 L. T. 679; 25 W. R. 89, as to rebutting evidence.

3. Subject to the provisions of the following rules, the plaintiff may, with his reply, or at any time after the close of the pleadings, give notice of trial of the action, and thereby specify one of the modes mentioned in Rule 2; and the defendant may, upon giving notice within four days from the time of the service of the notice of trial, or within such extended time as a court or judge may allow, to the effect that he desires to have the issues of fact tried before a judge and jury, be entitled to have the same so tried. Notice of trial by plaintiff. Claim of jury by defendant.

Notice of trial may be given with reply, though the pleadings are not closed. (*Asquith* v. *Molyneux*, 49 L. J., Q. B. 800; but see *Metropolitan Inner, &c. Co.* v. *Metropolitan Railway Co.*, 5 Ex. D. 195; 49 L. J., Ex.

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505.) Defendant held entitled to have action to restrain obstruction of light tried by jury, according to his notice. (*Bowdier* v. *Burrell*, 5 Ch. D. 512; 46 L. J., Ch. 615.)

This and the following rule provide a procedure for enabling the parties to fix the mode of trial between themselves; and the right of the defendant to a jury under this rule is absolute. (*Sugg* v. *Silber*, 1 Q. B. D. 362; 45 L. J., Q. B. 460; 34 L. T. 582; 24 W. R. 640.) The procedure, however, is always subject to be varied under the jurisdiction given to the judge to order a trial before a referee by sects. 56 and 57 of the Act of 1873, and to order a trial without a jury given by Rule 26 of this Order, or under the C. L. P. Act, 1854. (See note to Rule 26, *post*.)

Notice of trial by defendant.

4. Subject to the provisions of the following rules, if the plaintiff does not within six weeks after the close of the pleadings, or within such extended time as a court or judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial, and thereby specify one of the modes mentioned in Rule 2; and in such case the plaintiff, on giving notice within the time fixed by Rule 3 that he desires to have the issues of fact tried before a judge and jury,* be* entitled to have the same so tried.

* *Sic.*

If there are several defendants, and the plaintiff has agreed to an extension of time for delivering the defences of some, but one has delivered his defence and the time for reply has expired, the pleadings are not closed. He should write to the [redacted] and ask how the action stands as regards his co-defendants. (*Ambroise* v. *Evelyn*, 10 Ch. D. 759; 48 L. J., Ch. 686; 27 W. R. 639.)

Plaintiff.

Dismissal for want of prosecution.

4*a*. The defendant, instead of giving notice of trial, may apply to the court or judge to dismiss the action for want of prosecution; and on the hearing of such application, the court or a judge may order the action to be dismissed accordingly, or may make such other order, and on such terms, as to the court or judge may seem just (*q*).

Jessel, M. R., has held that the application under this rule ought generally to be made in chambers. (*Frearson* v. *Loe*, 26 W. R. 138.) In *Evelyn* v. *Evelyn* (13 Ch. D. 138; 49 L. J., Ch. 18; 41 L. T. 499; 28 W. R. 34), Malins, V.-C., held that it might be made in chambers or in court, according to circumstances; and if the plaintiff, on receiving the notice, does not undertake to proceed, the defendant, on the plaintiff being ordered to proceed within a certain time, otherwise judgment, will have his costs.

Change of mode of trial.

5. In any case in which neither the plaintiff nor defendant has given notice under the preceding rules that he desires to have the issues of fact tried before a judge and jury, or in any case within the 57th section of the act,† if the plaintiff or defendant desires to have the action tried in any other mode than that specified in the notice of trial, he shall apply to the court or a judge for an order to that effect, within four days

† Page 46.

(*q*) Added by R. S. C., June, 1876, Rule 13, p. 562.

from the time of the service of the notice of trial, or within such extended time as a court or judge may allow.

An order under this rule is discretionary, and the Court of Appeal will not interfere with it except upon very strong grounds. (*Lascelles* v. *Butt*, 2 Ch. D. 588; 24 W. R. 659.)

Trial of different questions by different modes.

6. Subject to the provisions of the preceding rules, the court or a judge may, in any action at any time or from time to time, order that different questions of fact arising therein be tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the place or places for such trial or trials, and in all cases may order that one or more issues of fact be tried before any other or others.

By sect. 26 of the Act of 1873 (p. 26, *ante*), the High Court and also the commissioners of assize and referees may sit at any place.

Order allowing two out of many questions to be tried first made on condition that the plaintiff who applied discontinued his claim on the rest (*Emma Silver Mining Co.* v. *Grant*, 11 Ch. D. 918; 40 L. T. 804); but there must be special grounds, and a defendant is not entitled to have his counter-claim tried first. (*Piercy* v. *Young*, 15 Ch. D. 475.)

Trial before more judges than one.

7. Every trial of any question or issue of fact by a jury shall be held before a single judge, unless such trial be specially ordered to be held before two or more judges.

*Trial at Bar.*] Trial at bar, which is before more than one judge (see Chit. Arch. Pr., I. 376), can only be had at Westminster. Under this rule and sect. 26 of the Act of 1873, a trial by jury before more than one judge can now be had at Guildhall or in the country.

Contents of notice of trial.

8. Notice of trial shall state whether it is for the trial of the action or of issues therein; and in actions in the Queen's Bench, *Common Pleas and Exchequer** Divisions, the place and day for which it is [to be] (*r*) entered for trial. It may be in the Form No. 14† in Appendix (B.), with such variations as circumstances may require.

[* See p. 438.]

† Page 303.

Ten days' notice of trial.

Short notice, four days.

9. Ten days' notice of trial shall be given, unless the party to whom it is given has consented to take short notice of trial; and shall be sufficient in all cases, unless otherwise ordered by the court or a judge. Short notice of trial shall be four days' notice.

Substantially identical with sect. 97 of the C. L. P. Act, 1852, and R. G. H. T. 1853, Rule 35.

Notice of trial.

10. Notice of trial shall be given before entering the action for trial.

Notice and entry may be given and made in the district registry, if the action has proceeded in the district.

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(*r*) Added by R. S. C., Dec. 1875, Rule 12, p. 556.

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Lapse of notice of trial for London or Middlesex.

10*a*. Unless within six days after notice of trial is given the cause shall be entered for trial by one party or the other, the notice of trial shall be no longer in force. This rule is not to apply in any case in which notice of trial has been already given for to trials not in London or Middlesex (*s*).

For London or Middlesex.

11. Notice of trial for London or Middlesex shall not be or operate as for any particular sittings; but shall be deemed to be for any day after the expiration of the notice on which the action may come on for trial in its order upon the list.

Elsewhere.

12. Notice of trial elsewhere than in London or Middlesex shall be deemed to be for the first day of the then next assizes at the place for which notice of trial is given.

Countermand of notice of trial.

13. No notice of trial shall be countermanded, except by consent, or by leave of the court or a judge, which leave may be given subject to such terms as to costs, or otherwise, as may be just.

By sect. 98 of the C. L. P. Act, 1852, countermand might be given within four days from trial without an order. By this rule an order is required, but the time is unrestricted.

Entry for trial.

14. If the party giving notice of trial for London or Middlesex omits to enter the action for trial on the day or day after giving notice of trial, the party to whom notice has been given may, unless the notice has been countermanded under the last rule, within four days enter the action for trial.

[15. *Entry for trial in the country.* Annulled by Rule 4 of December, 1879, *infra*.]

Entry in district registry.

15*a*. After notice of trial has been given of any action or issue to be tried elsewhere than in London or Middlesex, either party may at any time before the day next before the commission day enter the action or issue for trial at the next assizes in the district registry (if any) of the city or town where the trial is to be had, or with the associate at the assize town as heretofore.

Where no district registry.

So long as there is no district registry in the places enumerated in the first of the following columns, entries for trial may be made in the district registries in the second of the following columns, *i.e.* actions and issues for trial at—

| | | |
|---|---|---|
| Bodmin | .. { may be entered in the district registry at } | Truro. |
| Carnarvon | .. ,, ,, | Bangor. |

(*s*) Added by R. S. C., Dec. 1875, Rule 13, p. 556.

| | | | | |
|---|---|---|---|---|
| Chelmsford | may be entered in the | | Colchester. | *Ord.* XXXVI. |
| Lancaster | district registry at | | Preston. | |
| Lewes | ,, | ,, | Brighton. | |
| Monmouth | ,, | ,, | Newport, Mon. | |
| Stafford | ,, | ,, | Hanley. | |
| Taunton or Wells | ,, | ,, | Bridgwater. | |
| Warwick | ,, | ,, | Birmingham. | |
| Winchester | ,, | ,, | Southampton. | |

Mode of entering.

The entry shall be made in a numbered list to be provided by the district registrar in such vacant number as the party entering shall select, and the list shall be open for the inspection of all parties interested therein at all times during office hours. At the time of entry two copies of the pleadings shall be delivered as directed by Order XXXVI., Rule 17*a*, one of which shall be duly stamped with the amount of the fee payable on entry of the cause for trial.

Expunging from list.

When the trial of an action or issue which has been entered for trial has been postponed or withdrawn under Order XXIII., Rule 2*, or settled, the party who made the entry shall immediately thereupon give notice thereof to the registrar, and such entry shall be expunged from the list.

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Forwarding to assize town.

The registrar shall close the list and transmit a corrected copy of the said list, together with the two copies of the pleadings, to the associate at the assize town in such time that the same may be received at his office before the opening of the commission.

Entry by associate.

Causes or issues entered for trial by the associate shall be entered in such vacant numbers in the list so transmitted as the party entering may select. The list shall then be re-numbered consecutively, and shall be the cause list for the assizes.

Double entry.

If both parties enter the action or issue for trial, it shall be tried in the order of the plaintiff's entry, and the defendant's entry shall be vacated (*t*).

List of actions for trial.

16. The list or lists of actions for trial at the sittings in London and Middlesex respectively shall be prepared, and the actions shall be allotted for trial without reference to the division of the High Court to which such actions may be attached.

Two copies of pleadings, one for judge.

17. The party entering the action for trial shall deliver to the officer [2 copies] (*u*) of the whole of the pleadings in the action [one of which shall be] (*v*) for the use of the judge at the trial. Such [copies] (*x*) shall be in print, except as to such parts, if

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(*t*) Substituted for Rule 15 by R. S. C., Dec. 1879, Rule 4, p. 570.

(*u*) Altered from "a copy," by R. S. C., Dec. 1875, Rule 14, p. 556.

(*v*) Added by R. S. C., Dec. 1875, Rule 14, *ib.*

(*x*) Altered from "copy," by R. S. C., Dec. 1875, Rule 14, *ib.*

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any, of the pleadings as are by these rules permitted to be written.

See Ord. XIX., Rule 5 (p. 166), and R. S. C. (Costs), Ord. V., p. 408, as to printing of pleadings.

Default of appearance of defendant at trial.

18. If, when an action is called on for trial, the plaintiff appears, and the defendant does not appear, then the plaintiff may prove his claim, so far as the burden of proof lies upon him.

In *Cockshott* v. *London General Cab Co.* (47 L. J., Ch. 126; 26 W. R. 31), Fry, J., held that notice of trial must be proved; but in *James* v. *Crow* (7 Ch. D. 410; 47 L. J., Ch. 200; 37 L. T. 749; 26 W. R. 236; and *Chorlton* v. *Dickie*, 13 Ch. D. 160; 49 L. J., Ch. 40), he followed the practice of the other judges, and did not require it.

Default of appearance of plaintiff at trial.

19. If, when an action is called on for trial, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment dismissing the action, but if he has a counter-claim, then he may prove such claim so far as the burden of proof lies upon him.

This and the preceding rule continue the practice formerly in use at law, except that a plaintiff not appearing was nonsuited, so that he could bring another action. The special procedure in case of non-appearance in ejectment, formerly provided by sect. 183 of the C. L. P. Act, 1852, is now discarded. A practice substantially similar to the present was in use in the equity courts.

Service of notice of trial need not be proved. (*James* v. *Crow*, 7 Ch. D. 410; 47 L. J., Ch. 200; 37 L. T. 749; 26 W. R. 236.) Case restored on explanation that plaintiff's counsel was absent by accident. (*Cockle* v. *Joyce*, 7 Ch. D. 56; 47 L. J., Ch. 148; 37 L. T. 428; 25 W. R. 41.) Where plaintiff bankrupt, and no notice given to trustee, the action was simply struck out. (*Eldrip* v. *Burgess*, 7 Ch. D. 411; 47 L. J., Ch. 342; 38 L. T. 232; 26 W. R. 435.)

Setting aside judgment in default of appearance.

Six days.

20. Any verdict or judgment obtained where one party does not appear at the trial, may be set aside by the court or a judge upon such terms as may seem fit, upon an application made within six days after the trial; such application may be made either at the assizes or in Middlesex.

It would seem that notice of motion must be given before an application under this rule. (See Ord. LIII., p. 244, *post*.)

Adjournment.

21. The judge may, if he think it expedient for the interests of justice, postpone or adjourn the trial for such time, and upon such terms, if any, as he shall think fit.

Taken from C. L. P. Act, 1854, sect. 19.

*Costs of the Day.*] An adjournment will probably not be given, as a rule, except upon payment of costs of the day, as to which, see C. L. P. Act, 1852, sect. 99; Chit. Arch. Pr. II., 1494; Ch. C. O. XL., Rule 22.

The party must pay all the costs incurred by the case being in the paper. (*Lydall* v. *Martinson*, 5 Ch. D. 780; 37 L. T. 69; 25 W. R. 866.)

[22. *Upon the trial of an action, the judge may, at or after*

*such trial, direct that judgment be entered for any or either party, as he is by law entitled to upon the findings, and either with or without leave to any party to move to set aside or vary the same, or to enter any other judgment, upon such terms, if any, as he shall think fit to impose; or he may direct judgment not to be entered then, and leave any party to move for judgment. No judgment shall be entered after a trial without the order of a court or judge.* Annulled by R. S. C., Dec. 1876, Rule 3.] Ord. XXXVI.

22*a*. Upon the trial of an action the judge may, at or after the trial, direct that judgment be entered for any or either party, or adjourn the case for further consideration, or leave any party to move for judgment. No judgment shall be entered after a trial without the order of a court or judge (*y*). Direction as to judgment.

This new rule omits all mention of leave reserved (for which "further consideration" before the judge himself is substituted), in order to carry out the provisions of sect. 17 of the Appellate Jurisdiction Act, 1876, p. 102, *ante*. This "further consideration" is for the purpose of arguing points of law at greater length than is possible at nisi prius, and must not be confounded with "further consideration" after issues or accounts and inquiries under Ord. XL., Rule 10, p. 223.

Further consideration may be reserved on motion without hearing evidence at the trial. (*Bennet* v. *Moore*, 1 Ch. D. 692; 45 L. J., Ch. 275; 24 W. R. 690.)

23. Upon every trial at the assizes, or at the London and Middlesex sitting of the Queen's Bench, Common Pleas or Exchequer Division, where the officer present at the trial is not the officer by whom judgments ought to be entered, the associate shall enter all such findings of fact as the judge may direct to be entered, and the directions, if any, of the judge as to judgment, and the certificates, if any, granted by the judge, in a book to be kept for the purpose. Entry by associate of findings.

24. If the judge shall direct that any judgment be entered for any party absolutely, the certificate of the associate to that effect shall be a sufficient authority to the proper officer to enter judgment accordingly. The certificate may be in the Form No. 15* in Appendix (B.) hereto. Certificate of associate.

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25. If the judge shall direct that any judgment be entered for any party subject to leave to move, judgment shall be entered accordingly upon the production of the associate's certificate.

This rule is, apparently by an oversight, still unrepealed, though in effect it is made useless by Rule 22*a*, *supra*.

26. The court or a judge may, if it shall appear desirable, direct a trial without a jury of any question or issue of fact, Power to direct trial without jury.

(*y*) Substituted for Rule 22 by R. S. C., Dec. 1876, Rule 3, p. 563.

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or partly of fact and partly of law, arising in any cause or matter which previously to the passing of the act could, without any consent of parties, be tried without a jury.

See note to Rule 3, *supra*.

An action for specific performances of a contract for the sale of a colliery (see Act of 1873, sect. 34, p. 33, *ante*) was directed to be tried without a jury under this rule in *Swindell* v. *The Birmingham Syndicate* (C. A.), 3 Ch. D. 127; 45 L. J., Ch. 756; 35 L. T. 111; 24 W. R. 911. In *Garling* v. *Royds* (25 W. R. 123; W. N. 1876, p. 291), Hall, V.-C., directed the action to be tried without a jury, but reserved a right to call a jury under this rule if any question should arise which, in his opinion, required one.

This rule is apparently inserted in its present place in order to suggest that a judge may direct a case to be tried without a jury at the trial itself, but it gives a general jurisdiction which may be invoked at any previous stage. The phrase, "cause which could without any consent of parties be tried without a jury," is somewhat indefinite. Certain causes, such as trespass to the person or goods, defamation, seduction, and breach of promise of marriage, clearly could not have been tried without a jury, except by consent. Clearly, also, actions involving substantially only matters of account which might have been compulsorily referred (see C. L. P. Act, 1854, sect. 3), could have been tried without a jury independently of consent. But on the border line are many causes, such as trespasses to land and breaches of contract, which might have been taken either to a court of law or equity at the option of the plaintiff, and in which trial by jury depended entirely on the court selected. In such cases the judge would seem to be able to employ this rule, especially as in sect. 57 of the Act of 1873 (p. 46, *ante*) a "right" to trial by jury alone precludes the referring of an action.

The Judicature Commissioners (1st Report, p. 13) recommended that "great discretion should be given to the Supreme Court as to the mode of trial," and that any questions to be tried should be capable of being tried in any division of the court by a judge, a jury, or a referee; and that "the plaintiff should be at liberty to give notice of trial by any one of these modes which he may prefer, subject to the right of the defendant to move the judge to appoint any other mode." (See Rule 5 of this Order.) Action for obstruction of way, raising question of conveyancing, ordered to be tried without a jury. (*Wedderburn* v. *Pickering*, 13 Ch. D. 769.) Action to restrain libel tried by a judge. (*Thomas* v. *Williams*, 14 Ch. D. 864; 49 L. J., Ch. 605.) Jury refused in watercourse action. (*Petar* v. *Lailey*, W. N., Feb. 19th, 1881.)

Power to direct trial with jury.

27. The court or a judge may, if it shall appear, either before or at the trial, that any issue of fact can be more conveniently tried before a jury, direct that such issue shall be tried by a judge with a jury.

Trials with assessors.

28. Trials with assessors shall take place in such manner and upon such terms as the court or a judge shall direct.

Power to order trial at town sittings or assizes.

29. In any cause the court or a judge of the division to which the cause is assigned may, at any time, or from time to time, order the trial and determination of any question or issue of fact, or partly of fact and partly of law, by any commissioner or commissioners appointed in pursuance of the 29th* section of the said act, or at the sittings to be held in Middlesex or London, and such question or issue shall be tried and determined accordingly.

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Order in Chancery Division to state why made.

29*a*. Where in any action in the Chancery Division the action or any question at issue in the action is ordered to be tried before any commissioner or commissioners of assize, or at the London or Middlesex sittings of any division other than the Chancery Division, the order directing such trial shall state on its face the reason for which it is expedient that the action, question or issue should be so tried and should not be tried in the Chancery Division (*z*).

As to trial by jury in the Chancery Division, see note to sect. 29 of the Act of 1873, *ante*.

The wish of the parties, damages only claimed, land in the county in question, and local witnesses assigned as reasons. (*Wood* v. *Hamblet*, 6 Ch. D. 113; 47 L. J., Ch. 113.) Application refused after action set down before a Chancery judge. (*Lloyd* v. *Jones*, 7 Ch. D. 390; 47 L. J., Ch. 470; 37 L. T. 524; 26 W. R. 262.)

Rotation of official referees.

29*a*. The business to be referred to the official referees appointed under the Supreme Court of Judicature Act, 1873, shall be distributed among such official referees in rotation by the clerks to the registrars of the Supreme Court, Chancery Division, in like manner in all respects as the business referred to conveyancing counsel appointed under the Act of the 15th & 16th Vict. cap. 80, sect. 41, is directed to be distributed by the second of the Consolidated General Orders of the Court of Chancery (*a*).

The rules of Ch. C. O. II. which are material to the present rule are Rules 1, 2 and 4, which are as follows:—

*Clerk of Registrars to settle Rotation.* 1. The business to be referred to the conveyancing counsel nominated by the Lord Chancellor under the stat. 15 & 16 Vict. c. 80, s. 41, shall be distributed among such counsel in rotation by the first clerk to the registrars for the time being, and during his occasional absence by the second clerk to the registrars for the time being, and during the occasional or necessary absence of both such clerks, then by such one of the other clerks to the registrars as the senior registrar for the time being may nominate for that purpose.

*Rotation to be regular and secret.* 2. The clerk making such distribution shall be responsible for the business being distributed according to regular and just rotation, and in such manner as to keep secret from all persons the rota or succession of conveyancing counsel to whom such business may be referred; and it shall be his duty to keep a record of such references with proper indexes, and to enter therein all such references with the dates when the same are made.

*Illness or unwillingness to act.* 4. In case the conveyancing counsel in rotation shall from illness or from any other cause be unable or decline to accept any such reference, the same shall be offered to the other conveyancing counsel appointed as aforesaid successively according to their seniority at the bar until some one of them shall accept the same.

Form of order of reference.

29*b*. When an order shall have been made referring any business to the official referee in rotation, such order, or a

(*z*) Added by R. S. C., Dec. 1876, Rule 4, p. 563, although "29*a*" was already occupied.

(*a*) Added by R. S. C., June, 1876, Rule 14, p. 562.

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duplicate of it, shall be produced to the registrar's clerk, whose duty it is to make such distribution as aforesaid; and such clerk shall (except in the case provided for by Rule 29*c* of this order) endorse thereon a note specifying the name of the official referee in rotation to whom such business is to be referred; and the order so endorsed shall be a sufficient authority for the official referee to proceed with the business so referred (*b*).

Power to court to select particular referee.

29*c*. The two last preceding rules of this order are not to interfere with the power of the court, or of the judge at chambers, to direct or transfer a reference to any one in particular of the said official referees, where it appears to the court or the judge to be expedient; but every such reference or transfer shall be recorded in the manner mentioned in Rule 2 of the second of the said Consolidated General Orders, and a note to that effect be endorsed on the order of reference or transfer; and in case any such reference or transfer shall have been or shall be made to any one in particular of the said referees, then the clerk, in making the distribution of the business according to such rotation as aforesaid, shall have regard to any such reference or transfer (*b*).

Trial before referee.

30. Where any cause or matter, or any question in any cause or matter, is referred to a referee, he may, subject to the order of the court or a judge, hold the trial at or adjourn it to any place which he may deem most convenient, and have any inspection or view, either by himself or with his assessors (if any), which he may deem expedient for the better disposal of the controversy before him. He shall, unless otherwise directed by the court or a judge, proceed with the trial de die in diem, in a similar manner as in actions tried by a jury.

Referee to sit de die in diem.

This rule follows Rule 34 of the Schedule to the Act of 1873, with the exception of a provision that the referee should sit in open court. (See next rule.) This rule is entirely new, and while it will tend to make the course of references far more speedy, will narrow the choice of special referees.

The words "de die in diem" are directory only, and parties acquiescing in a broken sitting cannot afterwards set aside the award, on the ground that the sitting was not continuous. (*Robinson* v. *Robinson*, 35 L. T. 337; 24 W. R. 675.)

Evidence before referee.

31. Subject to any order to be made by the court or judge ordering the same, evidence shall be taken at any trial before a referee, and the attendance of witnesses may be enforced by subpœna, and every such trial shall be conducted in the same manner, as nearly as circumstances will admit, as trials before a judge of the High Court, but not so as to make the tribunal of the referee a public court of justice.

Tribunal not public court.

(*b*) Added by R. S. C., June, 1876, Rules 15, 16, p. 562.

32. Subject to any such order as last aforesaid, the referee shall have the same authority in the conduct of any reference or trial as a judge of the High Court when presiding at any trial before him.

Authority of referee.

It has been held that this rule does not allow an application to review the decision of a referee to be made in the first instance to the Court of Appeal. (*Rowcliffe* v. *Leigh*, 46 L. J., Ch. 60; 25 W. R. 56.) The court, not the referee, grants discovery. (*Ibid.*)

33. Nothing in these rules contained shall authorize any referee to commit any person to prison or to enforce any order by attachment or otherwise.

No authority to commit.

[34. *The referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the court, or state any facts specially, with power to the court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the court may direct; and the court shall have power to require any explanation or reasons from the referee, and to remit the cause or matter, or any part thereof, for re-trial or further consideration to the same or any other referee.* Annulled, and replaced by Rule 34, *infra*.]

34. The referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the court, or state any facts specially, with power to the court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the court may direct; and the court shall have power to require any explanation or reasons from the referee, and to remit the cause or matter, or any part thereof, for re-trial or further consideration to the same or any other referee; or the court may decide the question referred to any referee on the evidence taken before him either with or without additional evidence as the court may direct (*c*).

Statement of case by referee.

## ORDER XXXVII.

### EVIDENCE GENERALLY.

1. In the absence of any agreement between the parties, and subject to these rules, the witnesses at the trial of any action or at any assessment of damages, shall be examined vivâ voce and in open court, but the court or a judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions

Evidence at trial to be in general oral.

Proof of particular facts by affidavit.

(*c*) Substituted for former Rule 34, by R. S. C., March, 1879, Rule 5, p. 568.

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as the court or judge may think reasonable, or that any witness whose attendance in court ought for some sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a commissioner or examiner: provided that where it appears to the court or judge that the other party bonâ fide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

This rule discards the former practice in equity of trial by affidavits subject to oral cross-examination before an examiner, and adopts generally the common law practice. It would seem that the sufficient reasons upon which a judge may order particular facts to be proved by affidavit are intended to be based on the common law principle, that a witness must be orally examined if he is available to be brought into court. (See, on this point, 1 Will. 4, c. 22, p. 528, *post*.)

A consent to allow affidavits to be used must be a formal written consent. (*New Westminster, &c. Co.* v. *Hannah*, 1 Ch. D. 278; 24 W. R. 137.) It may be given by the guardian *ad litem* of an infant. (*Knatchbull* v. *Fowle*, 1 Ch. D. 604; 24 W. R. 629. See, too, *Fryer* v. *Wiseman*, 45 L. J., Ch 199; 33 L. T. 779; 24 W. R. 205.)

Leave to use affidavits has been refused in an action to prove a will in solemn form, although the parties cited had not appeared. (*Cook* v. *Tomlinson*, 24 W. R. 851.)

The Chancery Division has, when consent to use affidavits appeared to have been improperly withheld, ordered the party withholding consent to pay the costs of an unsuccessful application by the other party for leave to use them. (*Patterson* v. *Wooler* (2), 2 Ch. D. 586; 45 L. J., Ch. 274; 34 L. T. 415; 24 W. R. 455.)

Evidence on motion, &c. by affidavit.

2. Upon any motion, petition or summons, evidence may be given by affidavit; but the court or a judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.

The applications within this rule are employed to invoke most of the statutory jurisdiction of the former Court of Chancery now assigned to the Chancery Division by sect. 34 of the Act of 1873.

Under this rule depositions may be filed, though not in the handwriting of the examiner (see 15 & 16 Vict. c. 68, s. 32), if they have been taken down in the presence of the parties, and certified by the examiner. (*Bolton* v. *Bolton*, 2 Ch. D. 217; 34 L. T. 123; 24 W. R. 426.)

Hearsay excluded from affidavits.

Costs.

3. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

Form of affidavits.

3*a*. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. Every affidavit shall be written or printed bookwise. No costs shall

be allowed for any affidavit or part of an affidavit substantially departing from this rule (*a*).

Description and address of deponent to be stated.

3*b*. Every affidavit shall state the description and true place of abode of the deponent.

Affidavits made by two or more deponents.

3*c*. In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

Affidavit to be filed.

3*d*. Every affidavit shall be filed in the central office. There shall be appended to every affidavit a note showing on whose behalf it is filed.

Alterations in affidavits.

3*e*. No affidavit having in the jurat or body thereof any interlineations, alteration or erasure shall without leave of the court or a judge be read or made use of in any matter depending in court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, or, if taken at the central office, either by his initials or by the stamp of that office, nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialed in the margin of the affidavit by the officer taking it.

Affidavits by illiterate persons.

3*f*. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his or her signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the court or a judge is otherwise satisfied that the affidavit was read over to and apparently perfectly understood by the deponent.

Stamping affidavits, and use of office copies.

3*g*. In cases in which by the present practice an original affidavit is allowed to be used, it shall before it is used be stamped with a proper filing stamp, and shall at the time when it is used be delivered to and left with the proper officer in court or in chambers, who shall send it to the central office. An office copy of an affidavit may in all cases be used, the original affidavit having been previously filed in the central

(*a*) Rules 3*a*, 3*g* are added by R. S. C., April, 1880, Rules 12—18, p. 574. They are taken from R. G. H. T., Rules 138—148.

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office, and the copy duly authenticated with the seal of that office.

Examination before officer of court, by order.

4. The court or a judge may, in cause or matter where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before any officer of the court, or any other person or persons, and at any place, of any witness or person, and may order any deposition so taken to be filed in the court, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the court or a judge may direct.

Where a plaintiff has consented to take evidence by affidavit, but finds that his witnesses will not make affidavits, it is not right to order that the plaintiff may examine witnesses *ex parte* on oath. (*Warner* v. *Mosses* (C. A.), 16 Ch. D. 100; 50 L. J., Ch. 28.) *Semble*, the right order is either that all the witnesses be examined *vivâ voce* at the trial, or those who will not make affidavit at the defendant's option. (Per Jessel, M. R.)

## ORDER XXXVIII.

### EVIDENCE BY AFFIDAVIT.

Time for filing affidavits, by plaintiff.

Fourteen days.

1. Within fourteen days after a consent for taking evidence by affidavit as between the plaintiff and the defendant has been given, or within such time as the parties may agree upon, or a judge in chambers may allow, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor a list thereof.

The consent should be in writing (see note to Ord. XXXVII., Rule 1), and it would be convenient for the party giving notice of trial to make a proposal on the subject to the other side at that time. Whether the agreement may refer to particular facts only seems doubtful, but that result may be obtained by an order.

By defendant.

Fourteen days.

2. The defendant within fourteen days after delivery of such list, or within such time as the parties may agree upon, or a judge in chambers may allow, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof.

Affidavits in reply.

Seven days.

3. Within seven days after the expiration of the said fourteen days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor a list thereof.

Cross-examination of deponent.

Notice for production of deponent.

4. When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party, may serve upon the party by whom such affidavit has been filed, a notice in writing, requiring the production of the deponent for cross-

examination before the court at the trial, such notice to be served at any time before the expiration of fourteen days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the court or a judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the court. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production.

Fourteen days.

The practice under Ch. C. Ord. XIX., Rule 9, was that at least forty-eight hours' notice should be given of an intention to cross-examine, and the cross-examination took place before an examiner and not the court.

5. The party to whom such notice as is mentioned in the last preceding rule is given, shall be entitled to compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined.

Cross-examination of deponent.

6. When the evidence in any action is under this order taken by affidavit, such evidence shall be printed, and the notice of trial shall be given at the same time or times after the close of the evidence as in other cases is by these rules provided after the close of the pleadings.

Printing of affidavit.

Time for notice of trial.

For further rules as to printing affidavits, see R. S. C. (Costs), Ords. I. —III., p. 408.

An affidavit taken by a judge's order after notice of trial may be used. (*Waring* v. *Lacey*, 24 W. R. 318.) As to printing, see *Re Watts' Estate*, 34 L. T. 647.

## ORDER XXXIX.

### MOTION FOR NEW TRIAL.

1. Where, in an action in the Queen's Bench, *Common Pleas*, or *Exchequer Division*,* there has been a trial by a jury, any application for a new trial shall be to a divisional court. And where the trial has been by a judge without a jury, the application for a new trial shall be to the Court of Appeal (*d*).

To whom motion is to be made.

* See p. 438.

See note to next rule and to Ord. LVIIIA., p. 255.

If the trial be without a jury there is an appeal on law and fact to the Court of Appeal. (*Oastler* v. *Henderson*, 2 Q. B. D. 575; 46 L. J., Q. B. 607.)

If the finding, though directed on admitted facts, is objected to, the application is to a divisional court. (*Yetts* v. *Foster* (C. A.), 3 C. P. D. 437; *Davies* v. *Felix*, 4 Ex. D. 32; 48 L. J., Ex. 3.) On a nonsuit the application is to a divisional court. (*Etty* v. *Wilson*, 3 Ex. D. 359; 47 L. J., Q. B. 644.) Where a Chancery action is tried by jury, the appli-

(*d*) Substituted, together with Rule 1*a*, for the former Rule 1, by R. S. C., Dec. 1876, Rules 5, 6, p. 563.

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cation for a new trial is to a divisional court. (*Hunt* v. *London Real Property Co.* (C. A.), 3 Q. B. D. 19; 47 L. J., Q. B. 51.)

[1*a*. *Time within which motion must be made.* Annulled R. S. C., March, 1879.]

1*b*. Applications for new trials shall be by motion calling on the opposite party to show cause at the expiration of eight days from the date of the order, or so soon after as the case can be heard, why a new trial should not be directed. Such motion shall be made within the times following, unless the court, or a judge, shall enlarge the time :—

An application to a divisional court for a new trial, if the trial has taken place in London or Westminster, shall be made within four days after the trial, or on the first subsequent day on which a divisional court, to which the application may be made, shall have actually sat to hear motions. If the trial has taken place elsewhere than in London or Middlesex, the motion shall be made within seven days after the last day of sitting on the circuits for England and Wales during which the action shall have been tried, or within the last four days of the next following sittings, if such day occurs during or within a week immediately before a vacation (*e*).

This rule has been twice altered. The first time to remove an ambiguity in the words "if the divisional court is sitting," and the second time to make the last day of the next circuits the terminus *à quo* instead of the beginning of the sittings in country cases. (See *Hallams* v. *Hills*, 46 L. J., Q. B. 88.) If no divisional court sits on the fourth day, the motion may be made at the next sitting. (*Grant* v. *Holland*, 49 L. J., Q. B. 800.)

Service of copy of order.

Four days.

2. A copy of such order shall be served on the opposite party within four days from the time of the same being made.

Restrictions upon grants of new trial.

3. A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, unless in the opinion of the court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial of the action; and if it appear to such court that such wrong or miscarriage affects part only of the matter in controversy, the court may give final judgment as to part thereof, and direct a new trial as to the other part only.

Formerly a misdirection on the main issue gave a right to a new trial, but, on a collateral point, the new trial was not granted unless injustice had been done by the misdirection. (Chit. Arch. Pr. vol. i. p. 1519, ed. 12.) Where evidence had been improperly admitted or rejected, the new trial was granted, unless it was clear that the result could not have been affected—an opposite presumption to that adopted by this rule. (Taylor on Evidence, vol. ii. p. 1597, ed. 5.)

(*e*) Substituted for former Rule 1*a*, by R. S. C., March, 1879, Rule 6, p. 568.

4. A new trial may be ordered on any question in an action, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question.

New trial on any one question.

See *Marsh* v. *Isaacs*, 45 L. J., C. P. 505.

5. An order to show cause shall be a stay of proceedings in the action, unless the court shall order that it shall not be so as to the whole or any part of the action.

Order to show cause to be stay.

## ORDER XL.

### Motion for Judgment.

1. Except where by the act or by these rules it is provided that judgment may be obtained in any other manner, the judgment of the court shall be obtained by motion for judgment.

Judgment by motion, where not otherwise provided.

2. Where at the trial of an action the judge or a referee has ordered that any judgment be entered subject to leave to move, the party to whom leave has been reserved shall set down the action on motion for judgment, and give notice thereof to the other parties within the time limited by the judge in reserving leave, or if no time has been limited, within ten days after the trial. The notice of motion shall state the grounds of the motion and the relief sought, and that the motion is pursuant to leave reserved.

Notice to opposite party where leave reserved.

"Leave to move" would seem to be now obsolete. (See sect. 17 of the Appellate Jurisdiction Act, 1876, p. 102, *ante;* Ord. XXXVI., Rule 22*a*, p. 211, *ante*.)

3. Where at the trial of an action the judge or referee abstains from directing any judgment to be entered, the plaintiff may set down the action on motion for judgment. If he does not so set it down and give notice thereof to the other parties within ten days after the trial, any defendant may set down the action on motion for judgment and give notice thereof to the other parties.

Notice to opposite party where no leave reserved.

4. Where, at or after the trial of an action by a jury, the judge has directed that any judgment be entered, any party may, without any leave reserved, apply to set aside such judgment and enter any other judgment, on the ground that the judgment directed to be entered is wrong by reason of the judge having caused the finding to be wrongly entered with reference to the finding of the jury upon the question ~~or question~~ or questions submitted to them.

Motion to set aside judgment entered at trial before jury.

Where, at or after the trial of an action before a judge, the judge has directed that any judgment be entered, any party may, without any leave reserved, apply to set aside such judg-

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ment and to enter any other judgment, upon the ground that, upon the finding as entered, the judgment so directed is wrong.

To Court of Appeal.

An application under this rule shall be to the Court of Appeal (*f*).

The second clause of this rule is substituted for the former Rule 5 so far as relates to trial before a judge, that rule now referring only to trial before a referee.

The last clause of the rule is new, and is issued for the purpose of carrying out the Appellate Jurisdiction Act, 1876, s. 17 (p. 102, *ante*), under which, in many cases, a single judge is now to have the power formerly possessed only by a divisional court; and the quasi-appeal in such cases to that court is abolished. The motion to the Court of Appeal must be on notice. (*Jones* v. *Davies* (C. A.), 36 L. T. 415.)

Before a referee.

5. Where at the trial of an action [*the judge or*] (*g*) a referee has directed that any judgment be entered, any party may, without any leave reserved, move to set aside such judgment, and to enter any other judgment, on the ground that upon the finding as entered the judgment so directed is wrong.

[6. *Time for motion under Rules* 4 *and* 5. Annulled, R.S.C., December, 1876, Rule 7, p. 564.]

See Ord. XXXIX., Rule 1, and note. The limit of time now would seem, in the case of trial before judge or jury, to be that given in appeals generally by Ord. LVIII., Rules 10, 15 (pp. 260, 261, *post*). The effect of annulling this rule appears to be that a motion to set aside the judgment of a referee is no longer an order to show cause, and may be made within some time unlimited by these rules.

Motion for judgment where issues ordered to be tried.

7. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, the plaintiff may set down the action on motion for judgment as soon as such issues or questions have been determined. If he does not so set it down, and give notice thereof to the other parties within ten days after his right so to do has arisen, then after the expiration of such ten days any defendant may set down the action on motion for judgment, and give notice thereof to the other parties.

Where some only of issues have been tried.

8. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the court or a judge for leave to set down the action

(*f*) Substituted for the former Rule 4, by R. S. C., Dec., 1876, Rule 7, p. 564.

(*g*) These words are repealed by R. S. C., Dec., 1876, Rule 7.

on motion for judgment, without waiting for such trial or determination. And the court or judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other questions of fact.

Limitation of time for motion for judgment.

9. No action shall, except by leave of the court or a judge, be set down on motion for judgment after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do.

Judgment on motion for new trial.

10. Upon a motion for judgment, or for a new trial, the court may, if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made as it may think fit.

The right to order judgment on a motion for new trial is not affected by the Appellate Jurisdiction Act or the Rules of December, 1876. (*Daun* v. *Simmins* (C. A.), 48 L. J., C. P. 343; 41 L. T. 783.) For another application of this rule, see *Hamilton* v. *Johnson* (C. A.), 5 Q. B. D. 263; 49 L. J., Q. B. 155.

Anticipatory judgment.

11. Any party to an action may at any stage thereof apply to the court or a judge for such order as he may, upon any admissions of fact in the pleadings, be entitled to, without waiting for the determination of any other question between the parties. The foregoing rules of this order shall not apply to such applications, but any such application may be made by motion, so soon as the right of the party applying to the relief claimed has appeared from the pleadings. The court or a judge may, on any such application, give such relief, subject to such terms, if any, as such court or judge may think fit.

A defendant who has pleaded a good defence which is unanswered by any reply cannot have the action dismissed under this rule. (*Litton* v. *Litton*, 3 Ch. D. 793; 46 L. J., Ch. 64; 24 W. R. 962; see however *Pascoe* v. *Richards*, 29 W. R. 330.) The non-denial by the defendant of a right not existing in law does not entitle the plaintiff to judgment on admissions. (*Chilton* v. *Corporation of London*, 7 Ch. D. 735; 47 L. J., Ch. 433; 38 L. T. 498; 26 W. R. 474.) Final judgment against husband where statement of defence dealt only with wife's liability. (*Jenkins* v. *Davies*, 1 Ch. D. 696; 24 W. R. 690.) Order to set down on motion for judgment an action in which two defendants delivered no defence and the third substantially admitted the claim. (*In re Smith, Bridson* v. *Smith*, 24 W. R. 392.) Where a vice-chancellor declined to order a foreclosure judgment on admissions in the pleadings, the defendant only alleging that by the agreement there must be equitable and not legal mortgage, the Court of Appeal declined to overrule the decision given under this rule. (*Mellor* v. *Sidebottom* (C. A.), 5 Ch. D.

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342; 46 L. J., Ch. 398; 37 L. T. 7; 25 W. R. 401.) Order for the usual inquiries made in a partition action the defendant admitting plaintiff's title on the pleadings. (*Gilbert* v. *Smith* (C. A.), 2 Ch. D. 686; 45 L. J., Ch. 514; 35 L. T. 43; 24 W. R. 568; see also *Burnell* v. *Burnell*, 11 Ch. D. 213; 48 L. J., Ch. 412; 27 W. R. 749.) Judgment under this rule in partnership actions. (*Thorp* v. *Holdsworth*, 3 Ch. D. 637; 45 L. J., Ch. 406; *Brassington* v. *Cussons*, 24 W. R. 880.) The order may be made on notice without setting down the motion. (*Hetherington* v. *Longrigg*, 10 Ch. D. 162; 48 L. J., Ch. 171; 27 W. R. 393.) Judgment given where allegations in claim not specifically denied. (*Rutter* v. *Tregenter*, 12 Ch. D. 758; 48 L. J., Ch. 791; 41 L. T. 16; 27 W. R. 902.)

## ORDER XLI.

### ENTRY OF JUDGMENT.

Entry of judgment by officer.

1. Every judgment shall be entered by the proper officer in the book to be kept for the purpose. The party entering the judgment shall deliver to the officer a copy of the whole of the pleadings in the action other than any petition or summons; such copy shall be in print, except such parts (if any) of the pleadings as are by these rules permitted to be written: provided that no copy need be delivered of any pleading a copy of which has been delivered on entering any previous judgment in such action. The forms in Appendix (D.)* hereto may be used, with such variations as circumstances may require.

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Date of entry where judgment in court.

2. Where any judgment is pronounced by the court or a judge in court, the entry of the judgment shall be dated as of the day in which such judgment is pronounced, and the judgment shall take effect from that date.

Date of entry in other cases.

3. In all cases not within the last preceding rule, the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date.

Entry of judgment upon filing affidavit.

4. Where under the act or these rules, or otherwise, it is provided that any judgment may be entered or signed upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced, and if the same be regular and contain all that is by law required he shall enter judgment accordingly.

Entry of judgment upon certificate, &c.

5. Where by the act or these rules, or otherwise, any judgment may be entered pursuant to any order or certificate, or return to any writ, the production of such order or certificate sealed with the seal of the court, or of such return, shall be a sufficient authority to the officer to enter judgment accordingly.

The certificate referred to is that given by the associate under Ord. XXXVI., Rules 23, 25 (p. 211), which is in the place of the *postea* at common law.

6. Any judgment of nonsuit, unless the court or a judge otherwise directs, shall have the same effect as a judgment upon the merits for the defendant; but in any case of mistake, surprise, or accident, any judgment of nonsuit may be set aside on such terms, as to payment of costs and otherwise, as to the court or a judge shall seem just. Judgment of nonsuit final.

Formerly a nonsuit was no bar to a future action.

## ORDER XLIa.

### AMENDMENT OF JUDGMENTS.

Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court or a judge on motion without an appeal (*h*).

## ORDER XLII.

### EXECUTION.

1. A judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree for the payment of money of any court whose jurisdiction is transferred by the said act might have been enforced at the time of the passing thereof. For recovery of money.

2. A judgment for the payment of money into court may be enforced by writ of sequestration, or in cases in which attachment is authorized by law, by attachment. For payment into court.

See the Debtors Act, 1869, p. 520, *post*. As to writ of sequestration, see further, Ord. XLVII., p. 236.

3. A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession. For recovery of land.

As to this writ see Ord. XLVIII., p. 237, *post*.

4. A judgment for the recovery of any property other than land or money may be enforced :— For recovery of property other than land or money.

By writ for delivery of the property.
By writ of attachment.
By writ of sequestration.

As to writ of for delivery, see Ord. XLIX., p. 237, and for writ of attachment, see Ord. XLIV., p. 230.

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(*h*) Added by R. S. C., December, 1879, Rule 5, p. 571.

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Attachment.

5. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal.

Attachment may be ordered, although the notice of motion asks for committal only. (*Piper* v. *Piper*, W. N. 1876, p. 202.)

Meaning of "writ of execution."

6. In these rules the term "writ of execution" shall include writs of fieri facias, capias, elegit, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the term "issuing execution against any party" shall mean the issuing of any such process against his person or property as under the preceding rules of this order shall be applicable to the case.

Execution of contingent judgment.

7. Where a judgment is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the court or a judge for leave to issue execution against such party. And the court or judge may, if satisfied that the right to relief has arisen according to the terms of the judgment, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried.

Execution against partners.

8. Where a judgment is against partners in the name of the firm, execution may issue in manner following:

(*a.*) Against any property of the partners as such;

(*b.*) Against any person who has admitted on the pleadings that he is, or has been adjudged to be a partner;

(*c.*) Against any person who has been served, as a partner, with the writ of summons, and has failed to appear:

If the party who has obtained judgment claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the court or a judge for leave so to do; and the court or judge may give such leave if the liability be not disputed, or if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

By Ord. XVI., Rule 10, p. 156, partners may sue and be sued in the names of their firm.

Production of judgment

9. No writ of execution shall be issued without the production to the officer by whom the same should be issued of the

judgment upon which the writ of execution is to issue, or an office copy thereof, showing the date of entry. And the officer shall be satisfied that the proper time has elapsed to entitle the judgment creditor to execution. — before issue of execution.

This is necessary, as there may be in the judgment a special order delaying execution, or something imposed as a condition precedent to the issue of execution. (See Rules 7 and 15.)

10. No writ of execution shall be issued without the party issuing it, or his solicitor, filing a præcipe for that purpose. The præcipe shall contain the title of the action, the reference to the record, the date of the judgment and of the order, if any, directing the execution to be issued, the names of the parties against whom, or of the firms against whose goods, the execution is to be issued, and shall be signed by [or on behalf of (*i*)] the solicitor of the party issuing it, or by the party issuing it, if he do so in person. The forms in Appendix (E.)* hereto may be used, with such variations as circumstances may require. — Filing of præcipe. — Contents of præcipe. — * Page 359.

Adapted from R. G. H. T. 1853, Rule 71.
As to the forms, see notes to Ord. XXIII., p. 178, *ante*.

11. Every writ of execution shall be indorsed with the name and place of abode or office of business of the solicitor actually suing out the same, and when the solicitor actually suing out the writ shall sue out the same as agent for another solicitor, the name and place of abode of such other solicitor shall also be indorsed upon the writ; and in case no solicitor shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town or parish, and also the name of the hamlet, street and number of the house of such plaintiff's or defendant's residence, if any such there be. — Solicitor's name, &c. to be indorsed on writ of execution.

Substantially identical with R. G. H. T. 1853, Rule 73.

12. Every writ of execution shall bear date of the day on which it is issued. The forms in Appendix (F.)† hereto may be used, with such variations as circumstances may require. — Forms. — † Page 368.

Identical with sect. 123 of the C. L. P. Act, 1852.

13. In every case of execution the party entitled to execution may levy the poundage, fees and expenses of execution, over and above the sum recovered. — Poundage fees.

14. Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff, or other officer or — Indorsement of writ with direction to sheriff.

(*i*) Added by R. S. C., June, 1876, Rule 17, p. 562.

*Ord.* XLII.

Direction to sheriff.

person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of 4*l.* per cent. per annum from the time when the judgment was entered up, provided that in cases where there is an agreement between the parties

Interest.

that more than 4*l.* per cent. interest shall be secured by the judgment, then the indorsement may be accordingly to levy the amount of interest so agreed.

By 1 & 2 Vict. c. 110, s. 17, judgment debts carried interest at 4 per cent. from entering up to satisfaction.

Fieri facias. Elegit.

15. Every person to whom any sum of money or any costs shall be payable under a judgment, shall immediately after the time when the judgment was duly entered, be entitled to sue out one or more writ or writs of fieri facias or one or more writ or writs of elegit to enforce payment thereof, subject nevertheless as follows:

(*a.*) If the judgment is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period:

Stay of execution.

(*b.*) The court or judge at the time of giving judgment, or the court or a judge afterwards, may give leave to issue execution before, or may stay execution until any time after the expiration of the periods hereinbefore prescribed.

By sect. 120 of the C. L. P. Act, 1852, and R. G. H. T. 1853, Rule 57, execution did not ordinarily issue until fourteen days, and "speedy execution" meant execution in four days. The present rule makes ordinary execution still more speedy, and great confidence seems to be reposed in parties and their solicitors not to employ the rule oppressively.

Renewal of writ of execution. One year.

16. A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided; but such writ may, at any time before its expiration, by leave of the court or a judge, be renewed, by the party issuing it, for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal of the court bearing the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his attorney,* and bearing the like seal of the court; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof.

* *Sic.*

This and the following rule are reproductions of sects. 124, 125 of the C. L. P. Act, 1852, except that a renewal now requires an order.

Evidence of renewal.

17. The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal as in the last preceding rule mentioned, showing the same to

have been renewed, shall be sufficient evidence of its having been so renewed.

Time for execution.

18. As between the original parties to a judgment, execution may issue at any time within six years from the recovery of the judgment.

This and the following rule are substituted for the former process of revival under C. L. P. Act, 1852, sects. 128, 129.

Execution, by leave, after six years from judgment.

19. Where six years have elapsed since the judgment, or any change has taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to the court or a judge for leave to issue execution accordingly. And such court or judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties, shall be tried in any of the ways in which any question in an action may be tried. And in either case such court or judge may impose such terms, as to costs or otherwise, as shall seem just.

Enforcement of order.

20. Every order of the court or a judge, whether in an action, cause or matter, may be enforced in the same manner as a judgment to the same effect.

Execution on judgment in Chancery Division.

20*a*. Upon any judgment drawn up by the Chancery registrars for the recovery of a sum of money and costs there may continue to be, at the election of the claimant, either one writ or separate writs of execution for the recovery of the sum and for the recovery of the costs, but a second writ shall only be for costs and shall be issued not less than eight days after the first writ (*k*).

Execution by and against other than original parties to judgment.

21. In cases other than those mentioned in Rule 18 any person not being a party in an action, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to the action; and any person not being a party in an action, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to the action.

This rule provides a means for enforcing an order to issue execution made under Rule 19, in cases where execution is desired by or against persons other than the original parties.

Auditâ querelâ.

22. No proceeding by auditâ querelâ shall hereafter be

(*k*) Added by R. S. C., April, 1880, Rule 20, p. 575.

*Ords.* XLII. —XLIV.

used; but any party against whom judgment has been given may apply to the court or a judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the court or judge may give such relief and upon such terms as may be just.

Savings.

23. Nothing in any of the rules of this order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever.

Order of writs of execution.

24. Nothing in this order shall affect the order in which writs of execution may be issued.

## ORDER XLIII.

### WRITS OF FIERI FACIAS AND ELEGIT.

Procedure in fi. fa. and elegit unaffected.

1. Writs of fieri facias and of elegit shall have the same force and effect as the like writs have heretofore had, and shall be executed in the same manner in which the like writs have heretofore been executed.

Writs in aid of fi. fa. and elegit.

2. Writs of venditioni exponas, distringas nuper vicecomitem, fieri facias de bonis ecclesiasticis, sequestrari facias de bonis ecclesiasticis, and all other writs in aid of a writ of fieri facias or of elegit, may be issued and executed in the same cases and in the same manner as heretofore.

## ORDER XLIV.

### ATTACHMENT.

Attachment.

1. A writ of attachment shall have the same effect as a writ of attachment issued out of the Court of Chancery has heretofore had.

Not without leave.

2. No writ of attachment shall be issued without the leave of the court or a judge, to be applied for on notice to the party against whom the attachment is to be issued.

The costs of an attachment are in the discretion of the court under Ord. LV. (p. 250, *post*), and should be applied for when the writ is moved for. (*Abud* v. *Riches*, 2 Ch. D. 528; 45 L. J., Ch. 649; 34 L. T. 713; 24 W. R. 637.)

Hall, V.-C., has decided that notice under this rule is not requisite when the cause or matter in which it is made was pending when the

Judicature Acts came into force. (*Garling* v. *Royds*, 1 Ch. D. 81; 45 L. J., Ch. 56; 24 W. R. 23.) A different opinion, however, has been expressed by Malins, V.-C., in *Dallas* v. *Glyn* (46 L. J., Ch. 51; 34 L. T. 897; 24 W. R. 881), and by the President of the Probate, &c. Division in *In the goods of Baigent*, 33 L. T. 462; 24 W. R. 43.

Where the order disobeyed was perfected before the commencement of the Judicature Acts, the notice is required. (*Re a Solicitor*, 1 Ch. D. 445; 45 L. J., Ch. 86; 24 W. R. 103.)

## ORDER XLV.

### ATTACHMENT OF DEBTS.

Order for oral examination of judgment debtor as to debts due to him.

1. Where a judgment is for the recovery by or payment to any person of money, the party entitled to enforce it may apply to the court or a judge for an order that the judgment debtor be orally examined as to whether any and what debts are owing to him, before an officer of the court, or such other person as the court or judge shall appoint; and the court or judge may make an order for the examination of such judgment debtor, and for the production of any books or documents.

This rule reproduces the process of examining a judgment debtor, introduced by the C. L. P. Act, 1854, sect. 60, from which it does not substantially differ. The debtor is bound to answer all pertinent questions. (*Costa Rica* v. *Stronsberg* (C. A.), 16 Ch. D. 8; 50 L. J., Ch. 7.)

As to effect of judgment summons on this process, see *Hayton* v. *Beale*, 29 W. R. 333, reversed by C. A., Feb. 26th, 1881.

Order for attachment of debts due to judgment debtor.

2. The court or a judge may, upon the ex parte application of such judgment creditor, either before or after such oral examination, and upon affidavit by himself or his solicitor stating that judgment has been recovered, and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction, order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment debt; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the court or a judge or an officer of the court, as such court or judge shall appoint, to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt.

This and the two following rules are, *mutatis mutandis*, identical with C. L. P. Act, 1854, sects. 61, 62 and 63, except that this rule, by using the words "the judge may order," instead of "it shall be lawful for a judge to order," gives a discretion to refuse the application. Section 28 of the C. L. P. Act, 1860, therefore, which empowered the judge to "refuse to interfere where, from the smallness of the amount to be recovered, or of the debt sought to be attached or otherwise, the remedy sought would be worthless or vexatious," is rendered unnecessary, except as a guide for the exercise of the discretion.

*Ord.* XLV.

*What Debts are attachable.*] For instances of debts held to be attachable and not attachable respectively, see Day's C. L. P. Act, 1854, 4th ed. p. 315 (A.D. 1872). It has been held since that date that a debt payable at a future time (*Tapp* v. *Jones*, L. R., 10 Q. B. 591; 44 L. J., Q. B. 127; 33 L. T. 201; 23 W. R. 694), an annuity for the benefit of a debtor and his child, subject to inquiry as to child's share (*Nash* v. *Pease*, 47 L. J., Q. B. 766), and money lodged in court to the credit of a cause (*Adams* v. *Gillem*, 9 Ir. C. L. 148), may be attached, but that the surplus of a bankrupt's estate cannot be attached in the hands of the official assignee (*Hunter, In re*, L. R., 8 C. P. 24; 42 L. J., C. P. 55; 27 L. T. 827; 21 W. R. 263), nor the proceeds of a judgment paid into a county court. (*Dolphin* v. *Layton*, 4 C. P. D. 130; 48 L. J., C. P. 426.) Such right as arises upon the service of a notice to treat under the Lands Clauses Consolidation Act, 1845, is not a "debt owing or accruing," nor is salary before payable. (*Hall* v. *Pritchett*, 3 Q. B. D. 215; 47 L. J., Q. B. 15; *Richardson* v. *Elmitt*, 2 C. P. D. 9. See also *Chatterton* v. *Watney*, 50 L. J., Ch. 227.) A garnishee order against executors will not affect money paid into court by them in an administration action, and carried to a separate account to meet a debt due to the judgment debtor. (*Stevens* v. *Phelips*, L. R., 10 Ch. 417; 44 L. J., Ch. 689; 23 W. R. 716.)

*Costs.*] Neither a person who has obtained an order for the costs of an interpleader issue (*Best* v. *Pembroke*, L. R., 8 Q. B. 363; 42 L. J., Q. B. 212; 29 L. T. 327), nor a person in whose favour a rule has been discharged with costs can obtain a garnishee order. (*Sunderland Local Marine Board* v. *Frankland*, L. R., 8 Q. B. 18; 42 L. J., Q. B. 13; 28 L. T. 18.) Nor a defendant in an action dismissed for want of prosecution. (*Cremetti* v. *Crom*, 4 Q. B. D. 225; 48 L. J., Q. B. 337.)

*Charging Order of Solicitor.*] As to the priority of the charging order of a solicitor under 23 & 24 Vict. c. 128, s. 28, see *Birchall* v. *Pugin*, L. R., 10 C. P. 397; 44 L. J., C. P. 278; 32 L. T. 495; 23 W. R. 923, and *Hamer* v. *Giles*, 11 Ch. D. 942; 48 L. J., Ch. 508.

Order for attachment to bind debts.

3. Service of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee, in such manner as the court or judge shall direct, shall bind such debts in his hands.

Issue of execution on garnishee.

4. If the garnishee does not forthwith pay into court the amount due from him to the judgment creditor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, then the court or judge may order execution to issue, and it may issue accordingly, without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment debt.

The garnishee has no right to retain the amount of any debt due to him from the judgment creditor, and the judge must order execution for the whole amount due from the judgment debtor. (*Sampson* v. *Seaton and Beer Railway Co.*, L. R., 10 Q. B. 28; 44 L. J., Q. B. 155; 33 L. T. 473; 23 W. R. 923.)

Determination of liability where disputed.

5. If the garnishee disputes his liability, the court or judge, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his

liability be tried or determined in any manner in which any issue or question in an action may be tried or determined. *Ord.* XLV.

This rule substitutes the mode of determining the garnishee's liability by an issue for the process, similar to writ of revivor, prescribed by sect. 64 of the C. L. P. Act, 1854.

Lien of third person on debt sought to be attached.

6. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the court or judge may order such third person to appear, and state the nature and particulars of his claim upon such debt.

Judge may bar claim of third person.

7. After hearing the allegations of such third person under such order, and of any other person whom by the same or any subsequent order the court or judge may order to appear, or in case of such third person not appearing when ordered, the court or judge may order execution to issue to levy the amount due from such garnishee, or any issue or question to be tried or determined according to the preceding rules of this order, and may bar the claim of such third person, or make such other order as such court or judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the court or judge shall think just and reasonable.

This and the preceding rule are, *mutatis mutandis*, taken from the C. L. P. Act, 1860, sects. 29, 30. When the third party consents to the judge deciding the issue, the decision is final. (*Eade* v. *Winsor*, 47 L. J., Q. B. 584.)

Garnishee discharged.

8. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the judgment debtor, to the amount paid or levied, although such proceeding may be set aside, or the judgment reversed.

Identical with sect. 65 of the C. L. P. Act, 1854.

Debt attachment book.

9. There shall be kept by the proper officer a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered, and otherwise; and copies of any entries made therein may be taken by any person upon application to the proper officer.

This and the succeeding rule are taken from sects. 66, 67, of the C. L. P. Act, 1854.

Costs.

10. The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such application, shall be in the discretion of the court or a judge.

*Ord.* XLVI.

## ORDER XLVI.

### CHARGING OF STOCK OR SHARES AND DISTRINGAS.

Order charging stock.

1. An order charging stock or shares may be made by any divisional court or by any judge, and the proceedings for obtaining such order shall be such as are directed, and the effect shall be such as is provided by 1 & 2 Vict. c. 110, ss. 14 and 15, and 3 & 4 Vict. c. 82, s. 1.

By 1 & 2 Vict. c. 110, s. 14, stock standing in the name of a judgment debtor, or of any one in trust for him, may, by order of a judge, so as to give him the same remedies as if the judgment debtor had charged it, be charged in favour of the judgment creditor; but proceedings to realize the security are not to be taken till after six months from the date of the order. By sect. 15, the order is, in the first instance, *ex parte*, and, notice being given to the company, operates as a distringas at once—that is, prevents the bank or company from allowing a transfer. The order is served on the judgment debtor, who may afterwards show cause within a time to be named therein. By 3 & 4 Vict. c. 82, s. 1, the provisions of 1 & 2 Vict. c. 110, s. 14, are expressly extended to reversionary interests, whether vested or contingent. (See the enactments at length, "Incorporated Statutes," IV., p. 494.)

This order will in some cases be made to secure costs before taxation. (*Burns* v. *Irving*, 1 Ch. D. 291.)

*Stop-order.*] A stop-order may be obtained in the Chancery Division before any order is made under this rule in the division which has given judgment in the matter. (*Hopewell* v. *Barnes*, 1 Ch. D. 630; 33 L. T. 777; 24 W. R. 629.)

2. [*Distringas.* Annulled, and the following rules substituted by R. S. C., April, 1880. Rules 22 and 30, p. 575.]

Writ of distringas not to issue.

2*a*. Order XLVI., Rule 2, is hereby annulled, and no writ of distringas shall hereafter be issued under the act 5 Vict. c. 5, s. 5.

Meaning of "company" and "stock."

* Page 497.

3. In the following rules of this order the expression "company" includes the governor and company of the bank of England and any other public company, whether incorporated or not, to which 5 Vict. c. 5, s. 5,* applies, and the expression "stock" includes shares, securities, and money.

Filing and service affidavit and notice.

† Page 309.

‡ Page 307.

4. Any person claiming to be interested in any stock standing in the books of a company may, on making an affidavit in or to the effect of the Form (B. 28)† in the schedule hereto, and on filing the same in the central office with a notice in or to the effect of the Form (B. 23)‡ in the same schedule annexed thereto, and on procuring an office copy of the affidavit and a duplicate of the filed notice authenticated by the seal of the central office, serve the office copy and duplicate notice on the company.

Affidavit to state address of claimant.

5. There shall be appended to the affidavit a note stating the person on whose behalf it is filed, and to what address

notices (if any) for that person are to be sent. All such notices shall be deemed to have been duly sent if sent through the post by a prepaid letter directed to that person at the address so stated or at any such substituted address as hereinafter mentioned, whether the person to whom the notice is sent is living or not.

Alteration of address.

6. The address so stated may, from time to time, be altered by the person by or on whose behalf the affidavit is filed, but all notices sent by post before the alteration to the address originally given or for the time being substituted therefor shall not be affected by any subsequent alteration. Any such alteration of address may be made by service of a memorandum thereof on the company in the manner required for service of a notice under this order.

Service of affidavit and filed notice to have same effect as writ of distringas.

7. The service of the office copy of the affidavit and of the duplicate of the filed notice shall for the period of five years from the day of service, but no longer (unless the notice is renewed as after mentioned), have the same force and effect as if these rules had not been made and a writ of distringas in respect of the stock had been duly issued under the act 5 Vict. c. 5, s. 5.

Renewal of notice.

8. The original notice may be kept on foot from time to time by a notice of renewal signed by the person by whom or on whose behalf the original notice was given, and served on the company, provided the notice of renewal, if only one is given, is served before the expiration of five years from the day on which the original notice was served, or, if more than one is given, then before the expiration of five years from the day on which the last previous notice of renewal was served. Each such notice of renewal shall have the effect of continuing and keeping on foot the original notice for the period of five years from the day on which the first notice of renewal or the last previous notice of renewal (as the case may be) was served.

Withdrawal or discharge of notice.

9. A notice filed under this order may at any time be withdrawn by the person by whom or on whose behalf it was given on a written request signed by him, or its operation may be made to cease by an order to be obtained by motion on notice or by petition duly served by any other person claiming to be interested in the stock sought to be affected by the notice.

Effect of request for transfer of stock or payment of dividend.

10. If, whilst a notice filed under this order continues in force, the company on whom it is served receive from the person in whose name the stock specified in the notice is standing, or from some person acting on his behalf or repre-

*Ords.* XLVI., XLVII.

senting him, a request to permit the stock to be transferred or to pay the dividends thereon, the company shall not by force or in consequence of the service or of any renewal of the notice, be authorized, without the order of the court, to refuse to permit the transfer to be made or to withhold the payment of the dividends for more than eight days after the date of the request.

Amendment of description of stock.

11. If the person who files a notice under this order desires to correct the description of the stock referred to in the filed notice he may file an amended notice and serve on the company a duplicate thereof sealed with the seal of the central office, and in that case the service of the notice shall be deemed to have been made on the day on which the amended duplicate is so served.

## ORDER XLVII.

### WRIT OF SEQUESTRATION.

Writ of sequestration for disobedience of order of court.

Where any person is by any judgment directed to pay money into court or to do any other act in a limited time, and after due service of such judgment refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment shall at the expiration of the time limited for the performance thereof, be entitled, without obtaining any order for that purpose, to issue a writ of sequestration against the estate and effects of such disobedient person. Such writ of sequestration shall have the same effect as a writ of sequestration in Chancery has heretofore had, and the proceeds of such sequestration may be dealt with in the same manner as the proceeds of writs of sequestration have heretofore been dealt with by the Court of Chancery.

The first part of this order is taken from Ch. C. Ord. XXIX., 3, except that by that rule the person prosecuting was entitled, in the first instance, to a writ of attachment, and to a "commission of sequestration" upon further disobedience. (For form of writ of sequestration, see Schedule (F.), Form 10, p. 374.)

No subpœna, or, without leave, sequestration for costs.

No subpœna for the payment of costs, and, unless by leave of the court or a judge, no sequestration to enforce such payment, shall be issued (*l*).

(*l*) Added by R. S. C., April, 1880, Rule 31, p. 577.

## ORDER XLVIII.

### Writ of Possession.

Writ of possession of land.

1. A judgment that a party do recover possession of any land may be enforced by writ of possession in manner heretofore used in actions of ejectment in the superior courts of common law.

2. Where by any judgment any person therein named is directed to deliver up possession of any lands to some other person, the person prosecuting such judgment shall, without any order for that purpose, be entitled to sue out a writ of possession on filing an affidavit showing due service of such judgment and that the same has not been obeyed.

For form of writ of possession see Schedule (F.), Form 7 p. 372. As to the manner of enforcing writs of possession, see Chit. Arch. Pr. vol. 2, p. 1045. By the C. L. P. Act, 1852, sect. 187, "upon any judgment in ejectment for recovery of possession and costs, there may be either one writ or separate writs of execution for the recovery of possession and for the costs at the election of the claimant."

## ORDER XLIX.

### Writ of Delivery.

Specific delivery of chattels.

A writ for delivery of any property other than land or money may be issued and enforced in the manner heretofore in use in actions of detinue in the superior courts of common law.

By sect. 78 of the C. L. P. Act, 1854, the court or a judge has "power, if they or he see fit so to do, upon the application of the plaintiff in any action for the detention of any chattel, to order that execution shall issue for the return of the chattel detained, without giving the defendant the option of retaining such chattel, upon paying the value assessed;" and it is enacted, that "if the said chattel cannot be found, and unless the court or a judge should otherwise order, the sheriff shall distrain the defendant by all his lands and chattels in the said sheriff's bailiwick, till the defendant render such chattel, or at the option of the plaintiff that he cause to be made of the defendant's goods the assessed value of such chattel; provided that the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's goods the damages, costs and interests in such action." Under the present rule, an order may be made in favour of a defendant.

A similar mode of enforcing judgment in an action for breach of contract to deliver specific goods is given by sect. 2 of the Mercantile Law Amendment Act, 1856, which also prescribes the proper findings in such a case.

*Ord.* L.

## ORDER L.

### CHANGE OF PARTIES BY DEATH, &c.

Action not to abate by death, &c.

1. An action shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title pendente lite.

A substantial re-enactment of the first part of Rule 17 of the schedule to the Act of 1873. This and the following rules of the Order are in the place of proceedings to revive in law and equity. (As to the former proceedings at law, see C. L. P. Act, 1852, sects. 135—142; and as to those in equity, see Ch. C. Ord. XXXII. made under the Chancery Amendment Act, 1852, sect. 52.)

Substitution of successor in interest.

2. In case of the marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to an action, the court or a judge may, if it be deemed necessary for the complete settlement of all the questions involved in the action, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party to the action, or be served with notice thereof in such manner and form as hereinafter prescribed, and on such terms as the court or judge shall think just, and shall make such order for the disposal of the action as may be just.

A simple order of a judge is prescribed for the addition of such parties as may be rendered necessary by death, marriage or bankruptcy, but none of these events produces an abatement of the action, or renders it absolutely necessary to apply for an order.

Continuance of action on devolution of title.

3. In case of an assignment, creation, or devolution of any estate or title pendente lite, the action may be continued by or against the person to or upon whom such estate or title has come or devolved.

Addition of new party.

4. Where by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of an action, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the action, it becomes necessary or desirable that any person not already a party to the action should be made a party thereto, or that any person already a party thereto should be made a party thereto in another capacity, an order that the proceedings in the action shall be carried on between the continuing parties to the action, and such new party or parties, may be obtained ex parte on application to the court or a judge, upon an allegation of such change, or transmission of interest or liability, or of such person interested having come into existence.

Ex parte order for addition of new party.

This is an order of course in the Chancery Division, and ought not to be moved for in court. (*Roffey* v. *Miller*, 24 W. R. 109.) It should

be made to a judge at chambers in the other divisions. (See *Crane* v. *Loftus*, 24 W. R. 93.) Where assignee is substituted as plaintiff for assignor, a second title should be added to the action and the fact of assignment alleged. (*Secar* v. *Lawson*, 50 L. J., Ch. 139.)

Service of order.

5. An order so obtained shall, unless the court or judge shall otherwise direct, be served upon the continuing party or parties to the action, or their solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following rules, be binding on the persons served therewith, and every person served therewith who is not already a party to the action shall be bound to enter an appearance thereto within the same time and in the same manner as if he had been served with a writ of summons.

Varying of order by guardian ad litem.

6. Where any person who is under no disability or under no disability other than coverture, or being under any disability other than coverture, but having a guardian ad litem in the action, shall be served with such order, such person may apply to the court or a judge to discharge or vary such order at any time within twelve days from the service thereof.

By person under disability without guardian.

7. Where any person being under any disability other than coverture, and not having had a guardian ad litem appointed in the action, is served with any such order, such person may apply to the court or a judge to discharge or vary such order at any time within twelve days from the appointment of a guardian or guardians ad litem for such party, and until such period of twelve days shall have expired such order shall have no force or effect as against such last-mentioned person.

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## ORDER LI.

### TRANSFERS AND CONSOLIDATION.

Transfer by Lord Chancellor.

1. Any action or actions may be transferred from one division to another of the High Court or from one judge to another of the Chancery Division by an order of the Lord Chancellor, provided that no transfer shall be made from or to any division without the consent of the president of the division.

The power of transfer given by this and the two following rules, which is authorized by sect. 36 of the Act of 1873 (p. 36, *ante*), existed in the Court of Chancery under 5 Vict. c. 5, s. 30, and Ch. C. Ord. VI., 5, mainly for the purpose of equalizing the business of the various branches of the court. There was no power to transfer actions from one of the three courts of law to another.

The jurisdiction given to the Lord Chancellor by this rule is personal, and cannot be exercised by the Court of Appeal. (*Re Hutley* (C. A.), 1 Ch. D. 11; 45 L. J., Ch. 79; 33 L. T. 237; *Re Boyd's Trusts*, 1 Ch. D. 12.) When both parties consent to an order, the papers should be left with the Lord Chancellor's secretary. (*Ibid.*) In other cases it appears

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that notice of motion should be given by the party intending to make the application. (*Cannot* v. *Morgan* (C. A.), 1 Ch. D. 1; 45 L. J., Ch. 50; 33 L. T. 402; 24 W. R. 91.) In *Davis* v. *Davis* (48 L. J., Ch. 40), Cairns, C., transferred an action for winding-up a partnership brought in one branch of the Chancery Division to another branch in which the administration of the estate of a deceased partner had been ordered.

Transfer from one judge to another in Chancery Division.

1*a*. In the Chancery Division a transfer of a cause from one judge to another may by the same or a separate order be ordered to be made or to be deemed to have been made for the purpose only of trial or of hearing, and in such case the original and any further hearing shall take place before the judge to whom the cause shall be so transferred; but all other proceedings therein, whether before or after the hearing or trial of the cause, shall be taken and prosecuted in the same manner as if such cause had not been transferred from the judge to whom it was assigned at the time of transfer, and as if such judge had made the decree or judgment, if any, made therein, unless the judge to whom the cause is transferred shall direct that any further proceedings therein, before or after the hearing or trial thereof, shall be taken and prosecuted before himself or before an official or special referee (*m*).

Petition to enforce solicitor's lien for costs held further proceeding. (*Porter* v. *West*, 50 L. J., Ch. 231.)

Transfer of action at any stage.

2. Any action may, at any stage, be transferred from one division to another by an order made by the court or any judge of the division to which the action is assigned: provided that no such transfer shall be made without the consent of the president of the division to which the action is proposed to be transferred.

The object of this rule seems to be to enable a division to transfer actions with which they consider another division more competent to deal. (For claim for transfer in pleading, see App. C., No. 24, p. 345.)

At chambers, any judge of the Queen's Bench, Common Pleas or Exchequer Divisions was a judge of all those divisions for the purposes of this rule. (*Hillman* v. *Mayhew* (1), 1 Ex. D. 132; 45 L. J., Ex. 334; 34 L. T. 256; 24 W. R. 435.) A transfer from one Chancery judge to another cannot be made under this rule but under the preceding. (*Chapman* v. *Real Property Trust*, 7 Ch. D. 732; 26 W. R. 587.) If the application is made by motion it must be on notice. (*Humphreys* v. *Edwards*, 45 Ch. D. 112.)

A transfer will not necessarily be made from the Chancery Division merely because trial by jury is required. (*Cannot* v. *Morgan* (C. A.), 1 Ch. D. 1; 45 L. J., Ch. 50; 33 L. T. 402; 24 W. R. 90.) Nor will an action for damages for collision between ships be necessarily transferred to the Admiralty Division. An action for damages brought in the Exchequer Division has been ordered to be consolidated with an action for specific performance brought by the defendant in the Chancery Division. (*Holmes* v. *Harvey*, 35 L. T. 600; 25 W. R. 80.) Action of ejectment with a counter-claim for the specific performance of an agreement for a release referred from the Exchequer to the Chancery Division

(*m*) Added by R. S. C., June, 1877, Rule 2, p. 566.

(*Holloway* v. *York* (C. A.), 2 Ex. D. 333; 25 W. R. 403); but the transfer from the Queen's Bench to the Chancery Division of an action of trespass with a counter-claim for the rectification of the deed of conveyance so as to give a right of way, and also for specific performance of an agreement to sell the land. (*Storey* v. *Waddle* (C. A.), 4 Q. B. D. 289; 27 W. R. 833.) Transfer and consolidation of three actions ordered together. (*Smith* v. *Whichcord*, 24 W. R. 900.)

Transfer of actions after order for administration or winding-up.

2*a*. When an order has been made by any judge of the Chancery Division for the winding-up of any company under the Companies Acts, 1862 and 1869, or for the administration of the assets of any testator or intestate, the judge in whose court such winding-up or administration shall be pending shall have power, without any further consent, to order the transfer to such judge of any action pending in any other division, brought or continued by or against such company, or by or against the executors or administrators of the testator or intestate whose assets are being so administered, as the case may be (*n*).

The judge before whom an administration action was pending ordered actions against the defendant, *quâ* executor, to be transferred to him. (*Mason* v. *Chapman*, 40 L. T. 678.) Transfer of action of *devastavit* against an executor to division in which estate being wound up. (*In re Timms*, 47 L. J., Ch. 831; 38 L. T. 679; 26 W. R. 692.) Action against company transferred *ex parte*, after a winding-up order. (*In re Landore Siemens Steel Co.*, 10 Ch. D. 489; 40 L. T. 35; 27 W. R. 304.) Transfer allowed *ex parte*. (*Re United Kingdom Telegraph Co.*, 29 W. R. 332.)

In Chancery or Probate Divisions transfer to judge.

3. Any action transferred to the Chancery Division or the Probate Division, shall, by the order directing the transfer, be directed to be assigned to one of the judges of such division to be named in the order.

Consolidation of actions.

4. Actions in any division or divisions may be consolidated by order of the court or a judge in the manner heretofore in use in the superior courts of common law.

Notwithstanding that, apparently, it is only the manner, not the principles, of consolidation at common law which is directed to be followed, it has been held by Malins, V.-C., that actions can only be consolidated at the instance of defendants, and not on the application of plaintiff in different actions against the same. (*Amos* v. *Chadwick*, 4 Ch. D. 869.) But in that case the time for proceeding in seventy-seven actions was enlarged until one had been tried as a test action. (*Ibid.* (C. A.), 9 Ch. D. 459; 47 L. J., Ch. 871; 39 L. T. 50; 26 W. R. 840.) If the plaintiff in the test action declines to proceed at the trial another action may be substituted. (*Ibid.*) But the test action must be dismissed with costs, as the interest of the other plaintiffs in the action cannot be considered. (*Robinson* v. *Chadwick*, 7 Ch. D. 878; 47 L. J., Ch. 607; 38 L. T. 415; 26 W. R. 556.) The converse process of separating the trial of claims joined in one action is provided by Ord. XVII., Rule 1 (p 160), the test given being whether they can be conveniently tried together.

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(*n*) Added by R. S. C., June, 1876, Rule 18, p. 562, in affirmance of *Garbutt* v. *Fawcus* (C. A.), 1 Ch. D. 155, p. 19, *ante*.

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## ORDER LII.

### INTERLOCUTORY ORDERS AS TO MANDAMUS, INJUNCTIONS, OR INTERIM PRESERVATION OF PROPERTY, &c.

Interim custody of subject-matter of litigation.

1. When by any contract a primâ facie case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the court or a judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into court or otherwise secured.

An order may be made under this rule by the Court of Appeal when an appeal is pending, although no application for the purpose has been made to the court below. (*Hyde* v. *Warden*, 1 Ex. D. 309.)

Sale of perishables, &c.

2. It shall be lawful for the court or a judge, on the application of any party to any action, to make any order for the sale, by any person or persons named in such order, and in such manner, and on such terms as to the court or judge may seem desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once.

Where a case is shown which at the trial would entitle the plaintiff to an order for sale of real estate, the order will be made before the trial. (*Davis* v. *Ashwin*, 47 L. J., Ch. 70; 26 W. R. 139.) Bonds ordered to be sold before the trial on the defendants admitting the plaintiffs' title to a charge by their pleadings. (*Coddington* v. *Jacksonville, &c. Railway Co.* (C. A.), 39 L. T. 12.) Order made for the sale of a horse under this rule. (*Bartholomew* v. *Freeman*, 3 C. P. D. 316; 38 L. T. 814; 26 W. R. 743.)

Detention or inspection of property.

3. It shall be lawful for the court or a judge, upon the application of any party to an action, and upon such terms as may seem just, to make any order for the detention, preservation, or inspection of any property, being the subject of such action, and for all or any of the purposes aforesaid to authorize any person or persons to enter upon or into any land or building in the possession of any party to such action, and for all or

Samples.

any of the purposes aforesaid to authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

For the practice upon a view by a jury, see C. L. P. Act, 1852, sects. 114, 115, and R. G. H. T. 1853, Rules 44—49. Sect. 58 of the C. L. P. Act, 1854, allowed inspection by the jury, or by a party, or by witnesses. A similar power is contained in the Patent Law Amendment Act, 1852, sect. 42.

Order for delivery to an officer of the court of jewellery detained by the defendant for the debt of the plaintiff's agent, who had deposited it with him, it being alleged that the defendant's pecuniary circumstances were doubtful. (*Velati* v. *Braham*, 45 L. J., Q. B. 415.) An order to enter for the purpose of inspecting and sampling may be made *ex parte*. (*Hennessey* v. *Rohmann*, 36 L. T. 51.)

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Applications for order for mandamus, injunction, or receiver.

* Page 22.

4. An application for an order under sect. 25, sub-sect. 8* of the act, or under Rules 2 or 3 of this order, may be made to the court or a judge by any party. If the application be by the plaintiff for an order under the said sub-sect. 8 it may be made either ex parte or with notice, and if for an order under the said Rules 2 or 3 of this order it may be made after notice to the defendant at any time after the issue of the writ of summons; and if it be by any other party, then on notice to the plaintiff, and at any time after appearance by the party making the application.

The application may be made by defendant, although a plaintiff has already given notice of motion; but the conduct of proceedings will generally be given to the plaintiff. (*Sargant* v. *Read*, 1 Ch. D. 600; 45 L. J., Ch. 206.) Under special circumstances an order may be made before writ. (*H.* v. *H.*, 1 Ch. D. 276; 45 L. J., Ch. 749; 24 W. R. 317.)

*Injunction.*] An interlocutory injunction is only made on an undertaking as to damages. (*Graham* v. *Campbell* (C. A.), 7 Ch. D. 490; 47 L. J., Ch. 593.) Refused on undertaking to keep an account. (*Elwes* v. *Payne* (C. A.), 12 Ch. D. 468; 48 L. J., Ch. 831.) "Injunction till next motion day" can be dissolved before, but not extended without leave. (*Bolton* v. *London School Board*, 7 Ch. D. 766; 47 L. J., Ch. 461.) Notice of injunction may be given by telegram. (*Bishop, In re*, 13 Ch. D. 110; 49 L. J., Bank. 1.)

*Receiver.*] Plaintiff appointed temporary receiver before appearance in an action for specific performance of an agreement to give a bill of sale (*Taylor* v. *Eckersley*, 2 Ch. D. 302; 45 L. J., Ch. 527; 34 L. T. 637; 24 W. R. 450), and in an action by judgment creditors claiming a charge on the debtor's equitable property (*Anglo-Italian Bank* v. *Davies* (C. A.), 9 Ch. D. 275; 47 L. J., Ch. 833; 39 L. T. 244; 27 W. R. 3; see also *Bryant* v. *Bull*, 10 Ch. D. 153; 48 L. J., Ch. 325; 39 L. T. 470; 27 W. R. 246). The appointment of a member of the firm of the plaintiff's solicitors held improper. (*Allen* v. *Lloyd* (C. A.), 12 Ch. D. 447; 41 L. T. 171; 28 W. R. 8.) When a receiver is appointed "upon his giving security," he is not receiver till he has done so; and a creditor who took the property in execution after the order but before security given, held not guilty of a contempt of court. (*Edwards* v. *Edwards*, 1 Ch. D. 291; 45 L. J., Ch. 391; 34 L. T. 472; 24 W. R. 713.) A person not a party to the action is not entitled to an order for payment due from the receiver. (*Brocklebank* v. *East London Rail. Co.*, 12 Ch. D. 839; 48 L. J., Ch. 729; 41 L. T. 205; 28 W. R. 30.) The receiver may issue a debtor's summons in respect of the property without express authority from the court. (*Ex parte Harris, In re Lewis*, 2 Ch. D. 423; 45 L. J., Bank. 71; 34 L. T. 261; 24 W. R. 851.) A trustee appointed receiver of the trust property does not ordinarily have a salary. (*Pilkington* v. *Baker*, 24 W. R. 234.) Unpaid vendor of property to company in liquidation appointed receiver without security or salary. (*Boyle* v. *Bettws Llanwitt Colliery Co.*, 2 Ch. D. 726; 45 L. J., Ch. 748; 34 L. T. 844.) Receiver appointed of property, as to part of which plaintiff was legal, and as to part equitable mortgagee. (*Pease* v. *Fletcher*, 1 Ch. D. 273; 45 L. J., Ch. 265; 33 L. T. 644; 24 W. R. 158.) Receiver of property of limited mining company appointed *ex parte*. (*Peak* v. *Trimsdran Coal Co.*, 2 Ch. D. 115; 45 L. J., Ch. 281; 24 W. R. 361.) Plaintiff appointed receiver by the Court of Appeal, judgment for the defendant being appealed against, and no application made to the court below. (*Hyde* v. *Warden*, 1 Ex. D. 309; 25 W. R. 65.) Receiver appointed in action of ejectment, defended on the ground that plaintiff was equitable mortgagee. (*Real and Personal Advance Co.* v. *M'Carthy*, 40 L. T. 878; 27 W. R. 706.) Receiver appointed pending an administration action in the Mayor's Court of London.

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(*Nothard* v. *Proctor* (C. A.), 1 Ch. D. 4; 45 L. J., Ch. 302; 33 L. T. 709.) In a partition action when one of the co-owners is in occupation. (*Porter* v. *Lopes*, 7 Ch. D. 358; 35 L. T. 824.) In a district registry administration action. (*Robertson* v. *Capper*, 26 W. R. 434.)

Time for application under Rule 1.

5. An application for an order under Rule 1 may be made by the plaintiff at any time after his right thereto appears from the pleadings; or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the court or a judge.

Claim of lien.

6. Where an action is brought to recover, or a defendant in his statement of defence seeks by way of counter-claim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the court or a judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such court or judge, order that the party claiming to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such court or judge may direct, and that upon such payment into court being made, the property claimed be given up to the party claiming it.

Sale of property vested in trustees.

6*a*. Whenever the trusts of any will or settlement are being administered, and a sale is ordered of any property vested in the trustees of such will or settlement upon trust for sale or with power of sale by such trustees, the conduct of such sale shall be given to such trustees unless the judge shall otherwise direct (*o*).

Writ of injunction abolished.

8. No writ of injunction shall be issued. An injunction shall be by a judgment or order, and any such judgment or order shall have the effect which a writ of injunction previously had (*p*).

## ORDER LIII.

### MOTIONS AND OTHER APPLICATIONS.

All applications to be by motion.

1. Where by these rules any application is authorized to be made to the court or a judge in an action, such application, if made to a divisional court or to a judge in court, shall be made by motion.

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(*o*) Added by R. S. C., March, 1879, Rule 7, p. 569.

(*p*) Added by R. S. C., April, 1880, Rule 32, p. 577. There is no Rule 7.

It must be observed that this rule only applies to applications "in an action." (See *Re Phillips & Gill*, 1 Q. B. D. 78; 45 L. J., Q. B. 136; 24 W. R. 158; *In the goods of Cartwright*, 34 L. T. 72; 24 W. R. 214.) For regulations as to a list for opposed motions, see "Subsidiary Regulations," p. 471.

Order to show cause not usually granted.

2. No rule or order to show cause shall be granted in any action, except in the cases in which an application for such rule or order is expressly authorized by these rules.

A motion for a new trial (Ord. XXXIX., Rule 1, p. 219) is for an order to show cause.

Notice of motion to parties affected.

3. Except where by the practice existing at the time of the passing of the said act any order or rule has heretofore been made ex parte absolute in the first instance, and except where by these rules it is otherwise provided, and except where the motion is for a rule to show cause only, no motion shall be made without previous notice to the parties affected thereby. But the court or judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order ex parte upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the court or judge may think just; and any party affected by such order may move to set it aside.

Where the party giving notice of motion does not appear, the other party, if he appear, is entitled to costs. (*Berry* v. *The Exchange Trading Co.*, 1 Q. B. D. 77; 45 L. J., Q. B. 224; 24 W. R. 318.) But held not entitled when the notice was given for a day out of the sittings and less than two clear days as the party receiving it was not bound to appear. (*Daubney* v. *Shuttleworth*, 1 Ex. D. 53; 45 L. J., Ex. 177; 34 L. T. 357; 24 W. R. 321.) See, too, *Brown* v. *Shaw*, 1 Ex. D. 425. And where a party served has no interest he is not entitled to appear to ask for costs. (*Campbell* v. *Holyland*, 7 Ch. D. 166; 47 L. J., Ch. 145; 38 L. T. 128.) *Ex parte* orders allowed on application to the court or a judge may be made in chambers in Chancery cases. (*Roffey* v. *Miller*, 24 W. R. 109.)

Time between motion and hearing.

4. Unless the court or judge give special leave to the contrary, there must be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion.

On notice given on the 19th for the "21st, or such other day as counsel can be heard" motion allowed to be made on the 22nd. (*Forrest* v. *Davies*, 26 W. R. 534.)

Consequence of failure to give notice.

5. If on the hearing of a motion or other application the court or judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the court or judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given upon such terms, if any, as the court or judge may think fit to impose.

Adjournment.

6. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the court or judge shall think fit.

*Ords.* LIII., LIV.

Service of notice on defendant not appearing.

7. The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice, or any petition or summons, upon any defendant who, having been duly served with a writ of summons to appear in the action, has not appeared within the time limited for that purpose.

On defendant before time for appearance, with leave.

8. The plaintiff may, by leave of the court or a judge to be obtained ex parte, serve any notice of motion upon any defendant along with the writ of summons, or at any time after service of the writ of summons, and before the time limited for the appearance of such defendant.

## ORDER LIV.

### APPLICATIONS AT CHAMBERS.

Summons.

1. Every application at chambers authorized by these rules shall be made in a summary way by summons.

Jurisdiction of master in Queen's Bench, &c. Divisions.

2. In the Queen's Bench, *Common Pleas* and *Exchequer* Divisions a master, and in the Probate, Divorce and Admiralty Division a registrar, may transact all such business and exercise all such authority and jurisdiction in respect of the same as under the act, or the schedule thereto, or these rules, may be transacted or exercised by a judge at chambers, except in respect of the following proceedings and matters, that is to say,—

Exceptions, in which master may not exercise jurisdiction of judge.

All matters relating to criminal proceedings or to the liberty of the subject:

The removal of actions from one division or judge to another division or judge:

The settlement of issues, except by consent:

Discovery, whether of documents or otherwise, and inspection, except by consent:

Appeals from district registrars:

Interpleader other than such matters arising in interpleader as relate to practice only, except by consent:

Prohibitions:

Injunctions and other orders under sub-section 8 of section 25 of the act,* or under Order LII.,† Rules 1, 2, and 3 respectively:

* Page 22.
† Page 246.

Awarding of costs, other than the costs of any proceeding before such master:

Reviewing taxation of costs:

Charging orders on stock funds, annuities, or share of dividends or annual produce thereof:

Acknowledgments of married women.

In addition to the exceptions specified in this and Rule 26, the jurisdiction of the common law masters at chambers, by R. G. M. T. 1867, made under 30 & 31 Vict. c. 68, did not extend to the removal of causes from inferior courts, the referring of causes, the rectifying a joint stock company's register, staying proceedings after verdict, and giving leave to sue *in formâ pauperis*. These exceptions repealed and others substituted. See Rule 26, *infra*.

Master in this rule includes "district registrar." (See Ord. XXXV., Rule 4, p. 200, *ante*, and notes thereto.)

Master may not grant service out of jurisdiction.

2*a*. The authority and jurisdiction of the district registrar or of a master of the Queen's Bench, *Common Pleas* or *Exchequer* Divisions shall not extend to granting leave for service out of the jurisdiction of a writ of summons or of notice of a writ of summons (*q*).

Jurisdiction of master in—

2*b*. The exception contained in Rule 2 of Order LIV. is hereby repealed so far as regards the proceedings hereinafter mentioned before the masters of the Queen's Bench, *Common Pleas* and *Exchequer* Divisions, and such masters may exercise all such authority and jurisdiction as may be exercised by a judge at chambers in respect of—

Discovery.

*Discovery*, whether of documents or otherwise, and inspection, except inspection under Order LII., Rule 3;

Charging orders.

*Orders nisi* for charging stock funds, annuities, or share of dividends, or annual proceeds thereof;

Interpleader.

*Interpleader*, except where all parties concerned consent to a final determination of the question in dispute without a jury or special case, and except where the sum in dispute is less than 50*l*., and one of the parties desires such a determination. In such cases the question shall be determined by the judge, unless the parties agree to refer it to the master (*r*).

Reference by master to judge.

3. If any matter appears to the master proper for the decision of a judge, the master may refer the same to a judge, and the judge may either dispose of the matter, or refer the same back to the master with such directions as he may think fit.

Appeal from master to judge.

Four days.

4. Any person affected by any order or decision of a master may appeal therefrom to a judge at chambers. Such appeal shall be by summons, within four days after the decision complained of, or such further time as may be allowed by a judge or master.

Section 49 of Act of 1873 making judges' orders as to costs only not appealable does not apply to the order of a master. (*Foster* v. *Edwards*, 48 L. J., Q. B. 767.)

(*q*) Added by R. S. C., June, 1876, Rule 19, p. 563.

(*r*) Added by R. S. C., November, 1878, Rule 4, p. 567, and numbered in duplicate.

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The appeal summons must be heard or adjourned within the four days, not merely taken out. (*Bell* v. *North Staffordshire Railway Co.*, 4 Q. B. D. 205; 48 L. J., Q. B. 518; 27 W. R. 263.)

Time enlarged when judge did not sit at chambers within the four days without a summons for the purpose. (*Gibbons* v. *London Financial Association*, 4 C. P. D. 263; 48 L. J., Ch. 514; 27 W. R. 619.)

No stay, unless ordered.

5. An appeal from a master's decision shall be no stay of proceeding unless so ordered by a judge or master.

6. [*In the Queen's Bench, Common Pleas and Exchequer Divisions, every appeal to the court from any decision at chambers shall be by motion, and shall be made within eight days after the decision appealed against.* Annulled by R. S. C., May, 1880, and the following rule substituted:—]

Appeal from judge to court.

Eight days.

6. In the Queen's Bench, *Common Pleas* and *Exchequer* Divisions, every appeal to the court from any decision at chambers shall be by motion, and shall be made within eight days after the decision appealed against, or, if no court to which such appeal can be made shall sit within such eight days, then on the first day on which any such court may be sitting after the expiration of such eight days (*s*).

By sect. 50 of the Act of 1873 (p. 44, *ante*), all orders made at chambers, except as to costs only are appealable.

This rule was amended in order to get rid of the effect of *Crom* v. *Samuels* (2 Q. B. D. 21; *Runtz* v. *Sheffield* (C. A.), 4 Ex. D. 150); and *Stirling* v. *Dubarry* (5 Q. B. D. 65), which held the eight days in the old rule to be absolute days whether a court was sitting or not.

If the last of the eight days falls on Sunday the motion may be made on the following day. (*Taylor* v. *Jones*, 1 C. P. D. 87; 45 L. J., C. P. 110; 34 L. T. 131.)

It is not enough that the notice should be within eight days, if the motion is after that time. (*Fox* v. *Wallis*, 2 C. P. D. 45; 35 L. T. 690; 25 W. R. 287; *Deykin* v. *Coleman* (C. A.), 36 L. T. 195; 25 W. R. 224.)

Procedure in chambers.

7. The following Rules numbered 34 to 40, both inclusive, shall apply to all applications at chambers in the Queen's Bench, *Common Pleas* and *Exchequer* Divisions (*t*).

"Numbered 34 to 40" in R. S. C., April, 1880. Here numbered "8 to 14." For regulations made in November, 1878, and April, 1880, on the same subject, see "Subsidiary Regulations," pp. 468, 471.

Forms of summons.

8. A summons shall be in the Form (H. 1) in the schedule hereto, with such variations as circumstances require. It shall be addressed to all the persons on whom it is to be served.

Preparation and issue of summons.

9. A summons shall be prepared by the applicant or his solicitor, and shall be sealed in the central office, and when

(*s*) Substituted for former Rule 6 by R. S. C., March, 1879, Rule 8, p. 568.

(*t*) Rules 7—14 are added by R. S. C., April, 1880, Rules 33—40, p. 577.

so sealed shall be deemed to be issued. The person obtaining a summons shall leave a copy thereof at the central office.

Hours of returns.

10. Unless a judge otherwise specially directs, summonses for time only shall be returnable at 10.30 in the forenoon, and be heard by the masters in priority to other business. Unless as aforesaid, other summonses shall be returnable at successive hours, commencing at 11 in the forenoon [*and summonses to be attended by counsel shall not be returnable before two in the afternoon* (*u*)]. In settling the number of summonses returnable at each hour regard shall be had to the nature of the several applications.

Hours of return.

10*a*. Order LIV. Rule 10, shall have effect as if the words "and summonses to be attended by counsel shall not be returnable before two in the afternoon" were omitted therefrom (*x*).

List of summonses.

11. Each summons, not being a summons for time only, shall, when issued, be entered by the proper officer in a list. The lists of summonses shall distinguish those which a master has jurisdiction to hear from those which a master has not jurisdiction to hear, and those which are to be attended by counsel from those which are not to be so attended.

Hearing of summonses.

12. The summonses in each list for hearing by a judge or master shall be called on in their order. If when a summons is called on neither party appears, the summons shall be passed over until the list for the hour has been gone through. The summonses passed over shall then be called on a second time in their order. If neither party appears to a summons so called on it shall be struck out. If one party only appears such order as seems just may, on an affidavit of service, be made ex parte. An affidavit of non-attendance shall not be required or allowed.

Form of order.

13. An order shall be in the Form (H. 2) in the schedule hereto, with such variations as circumstances require. It shall be sealed, and shall be marked with the name of the judge or master by whom it is made.

Filing consents to orders and adjournments.

14. Written consents to orders and adjournments shall be filed at the central office.

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(*u*) Omit words in brackets. See Rule 10*a*, *infra*.

(*x*) Added by R. S. C., May, 1880, Rule 4, p. 581.

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## ORDER LV.

### COSTS.

Costs—discretionary. Saving for trustee, &c. Saving, where jury.

Subject to the provisions of the act, the costs of and incident to all proceedings in the High Court shall be in the discretion of the court; but nothing herein contained shall deprive a trustee, mortgagee, or other person of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in courts of equity: provided that where any action or issue is tried by a jury, the costs shall follow the event, unless upon application made at the trial, for good cause shown the judge before whom such action or issue is tried, or the court, shall otherwise order.

The recommendation of the Judicature Commissioners on this subject was, that costs should be in the discretion of the court, the commissioners thinking that the absence of the discretionary power in the courts of common law "often occasioned injustice, and led to unnecessary litigation." (1st Report, p. 15.) The Act of 1873 embodied that recommendation, and the first part of this rule re-enacts Rule 47 of the schedule to that act. The proviso was inserted in committee of the House of Commons.

In the common law courts costs were as a general rule given to the successful party by virtue of a series of statutes commencing with the Statute of Gloucester (6 Edw. 1, c. 1), which first gave costs *eo nomine* to a plaintiff recovering damages. (See Gray on Costs.) Before the Statute of Gloucester, costs, though not recoverable *eo nomine*, were as a matter of fact included in the damages given by the jury. In the courts of equity costs have always been in the discretion of the court, which however uniformly considered that the successful party had a *primâ facie* claim to them, and in depriving him of them is said to have proceeded on certain fixed principles. (See Daniell's Ch. Pr. vol. 2, ch. xxxiii; Morgan & Davey on Costs.)

The discretion of the High Court as to costs is in general absolute; but the rights of trustees, &c. are on the one hand to be governed by the former rules of courts of equity, and on the other hand successful parties upon a trial by jury are to have a *primâ facie* right to costs as formerly at common law. The ordinary rule in Chancery suits between trustees and *cestuis que trustent* was to allow trustees their costs as between solicitor and client (Morgan & Davey on Costs, p. 290), unless a breach of trust were proved, in which case the opposite rule obtained. (*Ib.* 295.) Trustees paying money into court were generally allowed costs, except where their conduct in paying in was proved to be vexatious, in which case they might even be compelled to pay the cost of getting the money out again. (*Ib.* 212.) And trustees, &c. instituting or defending suits against strangers to their trusts were subject to the same rules as if they were suing or defending in their own right, and were not entitled to costs. (Dan. Ch. Pr. ii. 1224.) The rule as between mortgagor and mortgagee was, that the latter was entitled to add all his costs properly incurred to his security, and that the mortgagor or subsequent incumbrancer could redeem only on payment of principal, and interest and costs (Morgan & Davey on Costs, p. 155); and there had to be something of positive misconduct to deprive a mortgagee of his costs. (*Ib.* p. 157.)

The discretion over costs is further subject to the provisions of the act, *i. e.*, the 67th section of the Act of 1873 (p. 50), which incorporates certain sections of the County Courts Act, 1867 (30 & 31 Vict. c. 142), for which see "Incorporated Statutes," I., p. 481, *post*.

When a previous act is silent as to costs they are under this rule. (*Mercers' Co., In re*, 10 Ch. D. 481; 48 L. J., Ch. 384.)

*Discretion.*] The plaintiff enforcing a legal right without misconduct entitled to his costs. (*Cooper* v. *Whittingham*, 15 Ch. D. 501; 49 L. J., Ch. 752.) Costs reserved on inquiry as to damages before chief clerk. (*Slack* v. *Midland Rail. Co.*, 16 Ch. D. 81.) When claim and counter-claim are both dismissed with costs, the plaintiff has credit only for the amount by which the counter-claim has increased the costs. (*Mason* v. *Brentini*, 15 Ch. D. 287: *Saner* v. *Bilton*, 11 Ch. D. 416.) When a cause is remitted to a county court after issue joined and tried without a jury, the county court has no jurisdiction over the costs. (*Farmer* v. *May*, 22 Feb. 1881.)

*Third party.*] Costs of a third party ordered to be paid by the defendant in an action which was settled (*Dawson* v. *Shepherd*, 49 L. J., Ex. 529), notwithstanding *Yorkshire Wagon Co.* v. *Newport Coal Co.*, 5 Q. B. D. 268; 49 L. J., Q. B. 527. Plaintiffs ordered to pay costs of third and fourth parties after trial by judge. (*Witham* v. *Vane*, 42 L. T. 686; 28 W. R. 812.)

*Costs abiding the Event.*] The effect of this order is to repeal the previous statutes as to costs, except those preserved by sect. 67 of the Act of 1873 (*Garnett* v. *Bradley*, 3 App. Cas. 944; 48 L. J., Ex. 186; 39 L. T. 261; 26 W. R. 698; *Parsons* v. *Tinling*, 2 C. P. D. 119; 46 L. J., C. P. 230), including sect. 7 of County Courts Admiralty Jurisdiction Act, 1868. (*Tenant* v. *Ellis*, 6 Q. B. D. 46.) Where there are several causes of action tried by jury, and the defendant succeeds on some, he is entitled to his costs in respect of them. (*Myers* v. *Defries* (C. A.), 5 Ex. D. 180; 49 L. J., Ex. 266; 42 L. T. 137; 28 W. R. 406.) Where the plaintiff recovers a liquidated amount, and the defendant recovers a liquidated amount greater than the plaintiff's, the defendant has the costs of the action, and the plaintiff the costs of the witnesses establishing his claim. (*Baines* v. *Bromley*, 50 L. J., Ex. 129; so in *Chatfield* v. *Sedgwick* (C. A.), 4 C. P. D. 459; 27 W. R. 790.) In *Baines* v. *Bromley* it was added that the rule would be different if the counter-claim sounded in damages. (See also *Cole* v. *Firth*, 40 L. T. 851.) According to the latest authority, if a plaintiff's claim is reduced by a counter-claim sounding in damages to less than 20*l.*, the County Courts Act, 1867, s. 5, does not apply. (*Stooke* v. *Taylor*, 5 Q. B. D. 569; 49 L. J., Q. B. 857; but see, *contra*, *Staples* v. *Young*, 2 Ex. D. 324; 25 W. R. 304.) Where the plaintiff established a claim for more than 50*l.*, but it was reduced by counter-claim below 20*l.*, the County Court Act does not apply, because he could not have obtained relief in a County Court, and the plaintiff is entitled to the costs of the action. (*Potter* v. *Chambers*, 4 C. P. D. 457; 48 L. J., C. P. 274; 27 W. R. 414.) But see *Neale* v. *Clarke* (4 Ex. D. 286; 41 L. T. 438), where Kelly, C. B., in a similar case thought each party was entitled to the costs of the issues on which he succeeded; but Hawkins, J., followed *Potter* v. *Chambers*. In *Potter* v. *Chambers*, *ubi sup.*, the court declined to amend the associate's certificate so as to show how much plaintiff and defendant recovered; but in *Davidson* v. *Gray* (C. A.), 5 Ex. D. 189, n.; 42 L. T. 834, this was done. The nominal value put on a chattel as damages, if it is not returned, is not to be counted. (*Halliman* v. *Price*, 41 L. T. 627.)

*Good Cause shown.*] The judge is not confined to the conduct of the party during the litigation, but must assume the truth of the verdict. (*Harnett* v. *Vise*, 5 Ex. D. 307.) Application to the judge at the trial made at another assize town on the circuit held too late (*Tyne Alkali Co.* v. *Lawson*, 36 L. T. 100), made an hour after the trial, the judge reserving it till next morning held in time. (*Kynaston* v. *Mackinder* (C. A.), 47 L. J., Q. B. 76; 37 L. T. 390.) It has been held twice in the C. P. Division that the judge may deprive of costs without an application (*Collins* v. *Welch* (C. A.), 5 C. P. D. 27; 49 L. J., C. P. 260; 41 L. T. 785; 28 W. R. 208; *Turner* v. *Heyland*, 4 C. P. D. 432; 48 L. J., C. P. 535; 41 L. T.

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556); but in the former case the Court of Appeal held that what passed amounted to an application. There has been a difference of opinion on this subject in the Exchequer. (*Marsden* v. *L. & Y. Rail. Co.*, 42 L. T. 631.) The successful party may be ordered to pay costs to the unsuccessful. (*Harris* v. *Petherick*, 4 Q. B. D. 611; 48 L. J., Q. B. 521; 41 L. T. 146.) A divisional court has, under the terms of this order, original jurisdiction to deprive of costs (*Myers* v. *Defries* (C. A.), 4 Ex. D. 176; 48 L. J., Ex. 446; 40 L. T. 795; 27 W. R. 791; *Bowey* v. *Bell*, 4 Q. B. D. 95; 48 L. J., Q. B. 161; 39 L. T. 607; 27 W. R. 247); but not a judge at chambers, nor can he extend the time for applying. (*Baker* v. *Oakes* (C. A.), 2 Q. B. D. 171; 46 L. J., Q. B. 246; 35 L. T. 832; 25 W. R. 220.)

Where there are two trials, the costs of both follow the event of the second. (*Field* v. *G. N. Rail. Co.*, 3 Ex. D. 261; 47 L. J., Q. B. 662; *Green* v. *Wright* (C. A.), 2 C. P. D. 354; 46 L. J., C. P. 427.

Security for costs.

2. In any cause or matter in which security for costs is required, the security shall be of such amount and be given at such time or times and in such manner and form as the court or judge may direct (*y*).

The Chancery rule limiting the amount of security is superseded by this rule, and regard will be had to costs already incurred and future costs (*Massey* v. *Allen*, 12 Ch. D. 807; 48 L. J., Ch. 692; 41 L. T. 788; 28 W. R. 243); but Bacon, V.-C., has held that special reasons for increasing the amount must be shown. (*Paxton* v. *Bell*, 24 W. R. 1013.) As to the circumstances under which security for costs may be required from a plaintiff residing abroad, the following recent cases have been decided. A defendant admitting claim, but setting up an independent counter-claim, is not entitled to security for costs from the plaintiff, a foreigner residing abroad. (*Winterfield* v. *Bradnum* (C. A.), 3 Q. B. D. 324; 47 L. J., Q. B. 270; 38 L. T. 250; 26 W. R. 742.) On the other hand, a defendant, a foreigner residing abroad, denying the claim and setting up a counter-claim out of the same transaction, cannot be required to give security for the costs of the counter-claim. (*Mapleson* v. *Masini*, 4 Q. B. D. 144; 49 L. J., Q. B. 423; 28 W. R. 488.) Shareholders in a winding-up petition cannot be required to give security (*In re Percy, &c. Iron Co.*, 2 Ch. D. 531; 45 L. J., Ch. 526; 24 W. R. 1057); nor the plaintiff in an interpleader issue (*Belmonte* v. *Aynard*, 4 C. P. D. 352; 27 W. R. 789); nor a foreigner temporarily residing in England, though ordinarily abroad. (*Redondo* v. *Chaytor*, 4 Q. B. D. 453; 48 L. J., Q. B. 697; 40 L. T. 797; 27 W. R. 701.) There is an appeal as of right against an order for security, and the application for security may be made late in the action where new claims are introduced by amendment. (*Northampton Coal Co.* v. *Midland Waggon Co.*, 7 Ch. D. 500; 38 L. T. 82; 26 W. R. 485.) As to past costs when plaintiff bankrupt, see *Brocklebank* v. *King's Lynn Steamship Co.*, 3 C. P. D. 365; 47 L. J., C. P. 321; 38 L. T. 489; 27 W. R. 94. Action dismissed on failure of plaintiff to give security. (*La Grange* v. *McAndrew*, 4 Q. B. D. 210; 48 L. J., Q. B. 315; 39 L. T. 500; 27 W. R. 413.)

Security for costs where given by bond.

3. Where a bond is to be given as security for costs, it shall, unless the court or a judge otherwise directs, be given to the party or person requiring the security, and not to an officer of the court (*z*).

(*y*) Added by R. S. C., February, 1876, Rule 7, p. 559.

(*z*) Added by R. S. C., April, 1880, Rule 41, p. 578.

## ORDER LVI.

### Notices and Paper, &c.

Notices to be written.

1. All notices required by these rules shall be in writing, unless expressly authorized by a court or judge to be given orally.

Mode of printing.

2. Proceedings required to be printed shall be printed on cream wove machine drawing foolscap folio paper, 19 lbs. per mill ream or thereabouts, in pica type leaded, with an inner margin about three-quarters of an inch wide, and an outer margin about two inches and a half wide.

Affidavit.

3. Any affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript.

For further directions as to printing documents, see R. S. C. (Costs), Ords. I.—III., p. 408.

## ORDER LVII.

### Time.

Month to be calendar.

1. Where by these rules, or by any judgment or order given or made after the commencement of the act, time for doing any act or taking any proceeding is limited by months, not expressed to be lunar months, such time shall be computed by calendar months.

Sunday, &c.

2. Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas day, and Good Friday shall not be reckoned in the computation of such limited time.

This applies to bankruptcy appeals. (*In re Gilbert, Ex parte Viney* (C. A.), 4 Ch. D. 794; 46 L. J., Bank. 80; 36 L. T. 43; 25 W. R. 364.)

3. Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken, if done or taken on the day on which the offices shall next be open.

If the time for moving the court by way of appeal from chambers expires on Sunday, the motion may be made on the following day. (*Taylor* v. *Jones*, 1 C. P. D. 87; 45 L. J., C. P. 110; 34 L. T. 131.)

Long vacation.

4. No pleadings shall be amended or delivered in the long vacation, unless directed by a court or a judge.

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5. The time of the long vacation shall not be reckoned in the computation of the times appointed or allowed by these rules for filing, amending, or delivering any pleading, unless otherwise directed by a court or a judge.

Enlargement of time.

6. A court or a judge shall have power to enlarge or abridge the time appointed by these rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any), as the justice of the case may require, and any such enlargement may be ordered, although the application for the same is not made until after the expiration of the time appointed or allowed.

The application should not be ex parte when the time has elapsed. (*Evenett* v. *Lawrence*, 4 Ch. D. 139; 46 L. J., Ch. 119; *Wilkins* v. *Bedford*, 35 L. T. 622.)

Enlargement of time by consent.

6*a*. The time for delivering or amending any pleading may be enlarged by consent in writing, without application to the court or a judge (*a*).

It was held before this rule that if such a consent had been given no order was necessary. (*Ambroise* v. *Evelyn*, 10 Ch. D. 759; 48 L. J., Ch. 686; 27 W. R. 639.)

Admiralty action may be heard on a fixed day, before regular time for hearing.

7. In admiralty actions the court or a judge shall have power at any stage of the proceedings in such action, upon a motion or summons by either party, calling upon the other party to show cause why the trial of such action should not take place on an early day to be appointed by the court or a judge, to appoint that such trial shall take place on any day or within any time which to the court or judge shall seem fit; and for such purpose the court or judge shall have power upon such motion or summons to dispense with the giving of notice of trial, or to abridge the time or times appointed by these rules for giving such notice, for the delivery of pleadings, or for doing any other act or taking any other proceeding in the action, upon such terms (if any) as the nature of the case may require (*b*).

Service.

8. Service of pleadings, notices, summonses, orders, rules, and other proceedings shall be effected before the hour of six in the afternoon, except on Saturdays, when it shall be effected before the hour of two in the afternoon. Service effected after six in the afternoon on any weekday except Saturday shall be deemed to have been effected on the following day. Service effected after two in the afternoon on Saturday shall be deemed to have been effected on the following Monday (*c*).

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(*a*) Added by R. S. C., April, 1880, Rule 42, p. 578.

(*b*) Added by R. S. C., Feb. 1876, Rule 8, p. 559.

(*c*) Added by R. S. C., April, 1880, Rule 43, p. 578.

## ORDER LVIIA. (*d*).

### DIVISIONAL AND OTHER COURTS.

1. The following proceedings and matters shall continue to be heard and determined before the divisional courts; but nothing herein contained shall be construed so as to take away or limit the power of a single judge to hear and determine any such proceedings or matters in any case in which he has heretofore had power to do so, or so as to require any interlocutory proceeding therein heretofore taken before a single judge to be taken before a divisional court:— Matters to be heard by divisional courts.

Proceedings on the crown side of the Queen's Bench Division. Crown practice.

Appeals from revising barristers, and proceedings relating to election petitions, parliamentary and municipal. Election practice.

Appeals under section 6 of the County Courts Act, 1875. County courts.

Proceedings on the revenue side of the Exchequer Division. Revenue.

Proceedings directed by any act of parliament to be taken before the court, and in which the decision of the court is final. Statutory finality.

Cases stated by the Railway Commissioners under the 36 & 37 Vict. c. 48. Railway Commissioners.

Cases of habeas corpus, in which a judge directs that a rule nisi for the writ, or the writ be made returnable before a divisional court. Habeas corpus.

Special cases where all parties agree that the same be heard before a divisional court. Special case.

Appeals from chambers in the Queen's Bench, *Common Pleas* and *Exchequer* Divisions, and applications for new trials in the said division where the action has been tried with a jury. Appeals from chambers. New trials.

This rule must be read with sect. 17 of the Appellate Jurisdiction Act, 1876 (p. 77, *ante*), under which it is made. It will be observed that, whereas before that act hearing before a single judge of matters of law, except in the Court of Chancery, was the exception and not the rule, both that act and the present order make such a hearing the rule and not the exception. All the exceptions, habeas corpus and special case concern business of an appellate character. It will be seen from the proviso at the commencement of the rule, that it retains an existing, and does not create any new, jurisdiction.

As to crown, election and revenue cases, see note to sect. 34 of the Act of 1873 (p. 34, *ante*), which assigned these matters to the Queen's Bench, Common Pleas and Exchequer Divisions respectively.

As to proceedings which are final by statute, see note to sect. 19 of the Act of 1873, p. 11, *ante*.

(*d*) Added by R. S. C., Dec. 1876, Rules 8, 9, 10, p. 566.

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By sect. 26 of the 36 & 37 Vict. c. 48 (the Regulation of Railways Act, 1873), the Railway Commissioners "shall in all proceedings before them under sects. 6, 11, 12 and 13 of that act" (which relate to injunctions to desist from undue preference or to grant traffic facilities), "and may if they think fit in all other proceedings before them at the instance of any party. . . . state a case in writing for the opinion of any superior court determined by the commissioners upon any question which in the opinion of the commissioners is a question of law." It is conceived that cases stated by the commissioners will be heard by a divisional court under sect. 45 of the Act of 1873 (p. 45, *ante*), and Ord. LVIII., Rule 19, p. 264.

By sect. 6 of the County Courts Act, 1875 (38 & 39 Vict. c. 50), it is enacted that "any person aggrieved by the decision of a county court judge may appeal by motion within eight days." (See this section and the cases thereon, *post*, p. 540. See also Ord. LVIII., Rule 19, p. 264.)

Death or retirement of a judge.

* Page 77.

2. Where, by sect. 17* of the Appellate Jurisdiction Act, 1876, or by these rules, any application ought to be made to, or any jurisdiction exercised by, the judge before whom an action has been tried, if such judge shall die or cease to be a judge of the High Court, or if such judge shall be a judge of the Court of Appeal, or if for any other reason it shall be impossible or inconvenient that such judge should act in the matter, the president of the division to which the action belongs may either by a special order in any action or matter, or by a general order applicable to any class of actions or matters, nominate some other judge to whom such application may be made, and by whom such jurisdiction may be exercised.

Vacation judge.

3. Every vacation judge shall have the same power and authority as heretofore.

## ORDER LVIII.

### APPEALS.

Bills of exceptions, abolition of.

1. Bills of exceptions and proceedings in error shall be abolished.

This follows the recommendation of the Judicature Commissioners (1st Report, p. 24). The effect of a bill of exceptions, first given by 13 Edw. 1, stat. 1, c. 31, was to bring up a judge's ruling direct from Nisi Prius to the Court of Appeal. A judge's ruling is now in all cases taken first to the court below. For the cases in which an appeal lies to the

Court of Appeal, see Act of 1873, sect. 19, p. 11; and for an express saving of the right to have an issue left to the jury, see Act of 1875, sect. 22, p. 80. Error was brought upon the record or special case.

See sects. 18 (4), 19 and 45 of the Act of 1873, and notes thereto.

Appeal to be by rehearing and on motion.

Appeal from part.

2. All appeals to the Court of Appeal shall be by way of rehearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may by the notice of motion appeal from the whole or any part of any judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part.

As to length of notice, see Rule 4, *infra*.

Appeals from the Court of the County Palatine of Lancaster are now governed by this order. (*Lee* v. *Nuttall* (C. A.), 12 Ch. D. 61; 48 L. J., Ch. 616; 41 L. T. 4; 27 W. R. 805.)

The Court of Appeal has no jurisdiction to rehear an action in which it has given judgment in a report of an expert alleged to have been obtained by fraud. (*Flower* v. *Lloyd* (C. A.), 6 Ch. D. 269; 37 L. T. 419.) An original action brought to set aside the judgment dismissed. (*Ibid.* (C. A.), 10 Ch. D. 327; 39 L. T. 613; 27 W. R. 496.)

Person not party allowed to appeal. (*Markham* v. *Markham* (C. A.), 10 Ch. D. 1.)

Notice of appeal, service of.

Amendment of.

3. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may seem just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as to the Court of Appeal may seem fit.

Where a sum was ordered to be paid to one of three claimants, and one of the other claimants appealed, it was held that he must serve notice of appeal on both the other claimants (*Hunter* v. *Hunter* (C. A.), 24 W. R. 304), and that the unsuccessful party who did not appeal might on such service be heard in favour of a reversal of the order appealed against. (*Ibid.* 24 W. R. 527.)

There is full discretion for the amendment of notices of appeal as to dates, &c., and no special circumstances are required. (*In re Stockton Iron Furnace Co.* (C. A.), 10 Ch. D. 335; 48 L. J., Ch. 417; 40 L. T. 19; 27 W. R. 433.)

Time for.

Fourteen days.

Four days.

4. Notice of appeal from any judgment, whether final or interlocutory, shall be a fourteen days' notice, and notice of appeal from any interlocutory order shall be a four days' notice.

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Powers of Court of Appeal.

Further evidence.

5. The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Court of First Instance, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the court. The Court of Appeal shall have power to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said court notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may seem just.

Costs.

An appeal will lie from the Probate, &c. Division against a decision on the facts of a case (*Sugden* v. *Lord St. Leonards* (C. A.), 1 P. D. 154; 45 L. J., P. D. & A. 49; 34 L. T. 372; 24 W. R. 860); with due regard to the opinion of the judge below who has seen the demeanor of the witnesses. (*The Glannibanta*, 1 P. D. 283; 34 L. T. 934; 24 W. R. 1033. See, too, *Bigsby* v. *Dickinson*, 4 Ch. D. 24; 25 W. R. 89.)

The court will rarely reverse the decision of the court below refusing a rule for a new trial on the ground that the verdict was against the weight of the evidence, when the judge who tried the case agrees with the verdict. (*Corbett* v. *Ducie*, Dec. 13, 1876.)

The court can order a new trial as against a party, although no rule has been moved against that party, and the time has elapsed for moving against him. (*Purnell* v. *Great Western Rail. Co.*, 1 Q. B. D. 636; 45 L. J., Q. B. 617; 34 L. T. 822; 35 L. T. 605; 24 W. R. 720, 909.)

*Further Evidence.*] When it is desired to apply for leave to produce further evidence, notice should be given of the application to the other parties to the cause. (*Hastie* v. *Hastie* (C. A.), 1 Ch. D. 562; 45 L. J., Ch. 288; 34 L. T. 13; *Justice* v. *Mersey Steel and Iron Co.*, 24 W. R. 199.) Leave granted to subpœna witness without prejudice to not hearing his evidence. (*In re Coal Economising Co., Gover's case*, 24 W. R. 36.)

*Costs.*] The practice is that costs usually follow the event. (1 Ch. D., 1 Mem.; *Olivant* v. *Wright*, 45 L. J., Ch. 1; *In re Winsor*, 1 Ch. D. 113; 45 L. J., Bk. 18; 33 L. T. 613; 24 W. R. 113.) When an appellant succeeds in a point not taken below, he will be allowed the costs below, but not of appeal. (*Hussey* v. *Payne*, 8 Ch. D. 670; 47 L. J., Ch. 751; 38 L. T. 543; 26 W. R. 703.) When respondents give notice to vary judgment, and appeal dismissed, appellants pay all costs except those attributable to the notice. (*The Lauretta*, 4 P. D. 25; 48 L. J., P. 55; 40 L. T. 444; 27 W. R. 902.) The costs of an application for the costs of an abandoned notice of appeal not allowed, unless the appellant

applied to for them. (*Griffin* v. *Allen* (C. A.), 11 Ch. D. 913; 28 W. R. 100.) Where an appellant obtained a rule *nisi* for a new trial, and gave notice of appeal against the judgment, the costs of the motion disallowed as being unnecessary under Ord. XL., Rule 10. (*Waddell* v. *Blockey*, 10 Ch. D. 416; 40 L. T. 286; 27 W. R. 233.)

Order for new trial by Court of Appeal.

5*a*. If upon the hearing of an appeal from a judgment pronounced by a judge or court on the verdict or finding of a jury, or of a judge without a jury, it shall appear to the Court of Appeal that a new trial ought to be had, it shall be lawful for the said Court of Appeal, if it shall think fit, to order that the verdict and judgment shall be set aside, and that a new trial shall be had (*e*).

Appeal by respondent.

6. It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the court below should be varied, he shall, within the time specified in the next rule, or such time as may be prescribed by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers conferred by the act upon the Court of Appeal, but may, in the discretion of the court, be ground for an adjournment of the appeal, or for a special order as to costs.

See note to Rule 3, *supra*.

Notice by respondent. Eight days.

7. Subject to any special order which may be made, notice by a respondent under the last preceding rule shall in the case of any appeal from a final judgment be an eight days' notice, and in the case of an appeal from an interlocutory order a two days' notice.

Entry of appeal for hearing.

8. The party appealing from a judgment or order shall produce to the proper officer of the Court of Appeal the judgment or order or an office copy thereof, and shall leave with him a copy of the notice of appeal to be filed, and such officer shall thereupon set down the appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Court of Appeal or a judge thereof shall otherwise direct, but so as not to come into the paper for hearing before the day named in the notice of appeal.

The appeal must be entered before the day named for the hearing in the notice, or if that is in vacation, before the next sitting of the court, otherwise it will be dismissed. (*In re National, &c. Co.* (C. A.), 4 Ch. D. 305; 46 L. J., Ch. 183; 35 L. T. 689; 25 W. R. 151.) Leave to enter refused where the entry made after the day for hearing through mistake of solicitor's clerk (*Rhodes* v. *Jenkins* (C. A.), 7 Ch. D. 711; 47

(*e*) Added by R. S. C., March, 1879, Rule 9, p. 569.

*Ord.* LVIII.

L. J., Ch. 870; 38 L. T. 403; 26 W. R. 361); but where the order was not drawn up until too late by the act of the respondent, so that the appellant had not the materials for entering the case, the appeal was heard (*Goodbarne* v. *Fothergill* (C. A.), 10 Ch. D. 613; 40 L. T. 408; 27 W. R. 587): and if an appellant does not set down his appeal in time he may abandon it and give a fresh notice if still in time to do so. (*Norton* v. *London and North Western Rail. Co.* (C. A.), 11 Ch. D. 118; 40 L. T. 597; 27 W. R. 773.) If the appellant neglects to enter the appeal, the respondent ought not to appear, but may apply for his costs. (*Webb* v. *Mansel*, 2 Q. B. D. 117; 25 W. R. 389.)

When the appeal is from a refusal of an application, where no order has been drawn up, the rule requiring the order to be produced does not apply. (*Smith* v. *Grindley* (C. A.), 3 Ch. D. 80; 35 L. T. 112; 24 W. R. 956.)

Winding-up. Bankruptcy. Time for appeal. Twenty-one days.

9. The time for appealing from any order or decision made or given in the matter of the winding-up of a company under the provisions of the Companies Act, 1862, or any act amending the same, or any order or decision made in the matter of any bankruptcy, or in any other matter not being an action, shall be the same as the time limited for appeal from an interlocutory order under Rule 15.

Ex parte applications.

10. Where an ex parte application has been refused by the court below, an application for a similar purpose may be made to the Court of Appeal ex parte within four days from the date of such refusal, or within such enlarged time as a judge of the court below or of the Appeal Court may allow.

If the court grant the application, it will frequently direct cause to be shown before itself. (See *e. g.*, *Sharrock* v. *London and North Western Rail. Co.*, 1 C. P. D. 70.)

Question of fact.

11. When any question of fact is involved in an appeal, the evidence taken in the court below bearing on such question shall, subject to any special order, be brought before the Court of Appeal as follows:

Evidence.

(*a.*) As to any evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed:

Judge's notes.

(*b.*) As to any evidence given orally, by the production of a copy of the judge's notes, or such other materials as the court may deem expedient.

The affidavits to be used on an appeal are to be filed with the officers of the division whose decision is appealed from. (*Watts* v. *Watts* (C. A.), 45 L. J., Ch. 658; 24 W. R. 623.)

Office copies may be in some cases dispensed with on the ground of expense, and an officer of the court ordered to attend with the originals. (*Sickles* v. *Norris* (C. A.), 45 L. J., Q. B. 148; 24 W. R. 102; *Crawford* v. *The Hornsea Steam Brick, &c. Co.*, 34 L. T. 923; 24 W. R. 422.)

Printing evidence.

12. Where evidence has not been printed in the court below, the court below or a judge thereof, or the Court of Appeal or

or a judge thereof, may order the whole or any part thereof to be printed for the purpose of the appeal. Any party printing evidence for the purpose of an appeal without such order shall bear the costs thereof, unless the Court of Appeal or a judge thereof shall otherwise order.

Verified notes.

13. If, upon the hearing of an appeal, a question arise as to the ruling or direction of the judge to a jury or assessors, the court shall have regard to verified notes or other evidence, and to such other materials as the court may deem expedient.

Interlocutory order, no bar.

14. No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Court of Appeal from giving such decision upon the appeal as may seem just.

Time for appeal.

Twenty-one days.

One year.

Security for costs.

15. No appeal from any interlocutory order shall, except by special leave of the Court of Appeal, be brought after the expiration of twenty-one days, and no other appeal shall, except by such leave, be brought after the expiration of one year. The said respective periods shall be calculated from the time at which the judgment or order is signed, entered, or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal. Such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be directed under special circumstances by the Court of Appeal.

In the Court of Chancery five years were allowed for appeal, except by leave. At common law 6 years were allowed for bringing error on a final judgment, but on appeals, strictly so called, notice had to be given in 4 days. (See C. L. P. Act, 1854, sect. 37.) In the Probate Court leave to appeal had to be applied for within a month from interlocutory decrees, and no time was limited for appealing from final decrees. In the Divorce Court the appeal was within 3 months, and in the Court of Admiralty within 15 days.

*"Interlocutory" and "Final" Orders.*] An appeal from an order of a divisional court making absolute a rule for a new trial is an interlocutory order (*Highton* v. *Treherne* (C. A.), 48 L. J., Ex. 167; 39 L. T. 411; 27 W. R. 245); but not an order overruling a demurrer. (*Trowell* v. *Shenton* (C. A.), 8 Ch. D. 318; 47 L. J., Ch. 738; 38 L. T. 369; 26 W. R. 837.) An order to sign final judgment under Order XIV. is an interlocutory order (*Standard Discount Co.* v. *Lagrange* (C. A.), 3 C. P. D. 67; 47 L. J., C. P. 3; 37 L. T. 372; 26 W. R. 25); so is an order made under the Trustee Relief Act (*In Re Baillie* (C. A.), 4 Ch. D. 785; 46 L. J., Ch. 330; 35 L. T. 917; 25 W. R. 310); so is an order made on an interpleader issue (*McAndrew* v. *Barker* (C. A.), 7 Ch. D. 701; 47 L. J., Ch. 340; 37 L. T. 810; 26 W. R. 317); so is an order of a Vice-Chancellor varying the chief clerk's certificate in an interpleader suit (*White* v. *Witt*, 5 Ch. D. 589; 46 L. J., Ch. 560; 37 L. T. 110; 25 W. R. 435); and so is an order in an administration action refusing the claim of a judgment creditor to goods of testator taken in execution for debt of executrix in carrying on testator's business. (*Pheysey* v. *Pheysey* (C. A.), 12 Ch. D. 305; 41 L. T. 607.) If the judge tries specific questions of fact, and finds a verdict separately from the judgment, the verdict is an interlocutory

order (*Krehl* v. *Burrell* (C. A.), 10 Ch. D. 420; 48 L. J., Ch. 383; 39 L. T. 461; 27 W. R. 234; *Lowe* v. *Lowe* (C. A.), 10 Ch. D. 432; 48 L. J., Ch. 383; 40 L. T. 236; 27 W. R. 309; *Cummins* v. *Heran* (C. A.), 4 Ch. D. 787; 46 L. J., Ch. 423; 36 L. T. 41; 25 W. R. 325); but where the judge decides law and fact according to the former practice of the Court of Chancery the appeal must be against the judgment. (*Dollman* v. *Jones*, 12 Ch. D. 553; 27 W. R. 877; *Potter* v. *Cotton*, 49 L. J., Q. B. 158; 41 L. T. 460; 28 W. R. 160.)

*Extension of Time.*] Leave to extend the time will not be given on an *ex parte* application. (*Evennett* v. *Laurence*, 4 Ch. D. 139; 46 L. J., Ch. 119; 25 W. R. 107.) The fact that the Court of Appeal has thrown doubt on the decision in a subsequent case is not a good ground for extending the time for appealing (*Craig* v *Phillips*, 7 Ch. D. 249; 47 L. J., Ch. 239; 37 L. T. 772; 27 W. R. 293); nor that the appellant's advisers have misconstrued the rules (*International, &c. Co.* v. *Moscow Gas Co.*, 7 Ch. D. 241; 47 L. J., Ch. 258; 37 L. T. 736; 26 W. R. 272; *Rhodes* v. *Jenkins*, 7 Ch. D. 711; 47 L. J., Ch. 870; 38 L. T. 403; 26 W. R. 361); but where a case followed in the Court below was overruled, time was extended in a case where it was followed. (*Re Normanton, &c. Co.* (C. A.), 50 L. J., Ch. 223.) Time extended when a fourteen days' notice of appeal had been given within the twenty-one days, and the four days' notice outside them. (*In re Ambrose, &c. Co., Taylor's case* (C. A.), 8 Ch. D. 643; 47 L. J., Ch. 696; 38 L. T. 587; 26 W. R. 602.)

*From what Date the Time runs.*] The time for appeal from the refusal of a motion will run from the date of the refusal, though an order is made on part of the motion. (*Traill* v. *Jackson, infra; Berdan* v. *Birmingham Small Arms Co.* (C. A.), 7 Ch. D. 24; 47 L. J., Ch. 96; 37 L. T. 588; 26 W. R. 89.) Nor will the addition, to an order refusing a motion, of an order for costs, extend the time. (*Swindell* v. *The Birmingham Syndicate* (C. A.), 3 Ch. D. 127; 45 L. J., Ch. 756; 35 L. T. 111; 24 W. R. 911.) But when an order is granted the time runs from the signing of the order. (*In re Lewes, Ex parte Garrard* (C. A.), 5 Ch. D. 51; 46 L. J., Bk. 70; 36 L. T. 42; 25 W. R. 364.) An order of a Vice-Chancellor affirming a chief clerk's disallowance of a creditor's proof in an administration action is a refusal of an application within this rule. (*Traill* v. *Jackson* (C. A.), 4 Ch. D. 7; 46 L. J., Ch. 16; 25 W. R. 36.) If dismissing order contain declaration of title, it is not a mere refusal. (*Clay* v. *Tetley, In re*, 50 L. J., Ch. 164.) When the whole of a fund in court was claimed, the claim as to half admitted, and an order made as to the other half, the time was held to run from signing the order. (*In re Mitchell* (C. A.), 9 Ch. D. 5.)

*Security for Costs.*] Insolvency is *primâ facie* ground for security (per Cotton, L. J., in *Hawkin* v. *Turner* (C. A.), 10 Ch. D. 372; 39 L. T. 285; 27 W. R. 20); especially when the appeal seems vexatious (*Will* v. *Brearley*, 3 C. P. D. 206; 47 L. J., Ch. 380), or when the appeal is both against the verdict and the judgment (*Waddell* v. *Blockey*, 10 Ch. D. 416; 40 L. T. 286; 27 W. R. 233); but not when the question raised had previously been favourably considered in the Court of Appeal. (*Rourke* v. *White Moss Colliery Co.*, 1 C. P. D. 556; 35 L. T. 160.) The fact that the appellant was a foreigner residing abroad held sufficient. (*Grant* v. *Banque Franco-Egyptienne*, 2 C. P. D. 430; 47 L. J., C. P. 41; 26 W. R. 68.) Held material circumstance that the appeal was against a refusal to rule a county court judge (*Clarke* v. *Roche*, 46 L. J., Ch. 372; 25 W. R. 309). The court has declined to order the dismissal of the appeal unless the security is given. (*Wilson* v. *Smith*, 2 Ch. D. 67; 45 L. J., Ch. 421; 34 L. T. 471; 24 W. R. 421.) The practice is not to name a time for giving the security, but if it is not given within a reasonable time the appeal may be dismissed.. (*Polini* v. *Gray*, 11 Ch. D. 741; 49 L. J., Ch. 41; 40 L. T. 861; *Vale* v. *Oppert*, 5 Ch. D. 633.) Appeal dismissed after nine months. (*Judd* v. *Green*, 4 Ch. D. 784.)

Security must be applied for before any costs have been incurred, or a

time has been fixed for hearing the appeal. (*Grant* v. *The Banque Franco-Egyptienne* (C. A.), 1 C. P. D. 143; 34 L. T. 470; 24 W. R. 339.

In appeals in Admiralty cases no order will usually be made for security, except under special circumstances, as this was the former practice of the Privy Council. (*The Victoria* (C. A.), 1 P. D. 280; 34 L. T. 931; 24 W. R. 596.)

A bond with sureties allowed. (*Phosphate Sewage Co.* v. *Hartmont*, 2 Ch. D. 810.) Where an appellant is clearly bound to give security he should offer to do so, and may have to pay costs of an application. (*The Constantine*, 4 P. D. 156; 27 W. R. 747.)

Appeal no stay except as ordered.

16. An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the court appealed from, or any judge thereof, or the Court of Appeal, may so order; and no intermediate act or proceeding shall be invalidated, except so far as the court appealed from may direct.

At law, error and appeal operated as a stay of execution, upon bail being given. (See C. L. P. Act, 1852, sect. 151, and C. L. P. Act, 1854, sect. 38.) In Chancery a deposit of 20*l.* was required by Ch. C. Ord. XXXI., 4, but the rehearing was no stay without an order. (*Ib.* 2.)

When the action has been dismissed no order for stay can be made, but an injunction not to part with property may be made. (*Wilson* v. *Church*, *ubi infra*.)

Notice must be given of any application to stay execution. (*Republic of Peru* v. *Weguelin*, 24 W. R. 297.)

A rule *nisi* for a new trial granted by the Court of Appeal ought not ordinarily to include a stay. (*Goddard* v. *Goddard* (C. A.), 47 L. J., Q. B. 382; 38 L. T. 166; 26 W. R., 362.) Account of profits made by sale of patented pumps stayed, as the defendant might be injured irreparably if successful. (*Adair* v. *Young*, 11 Ch. D. 136; 40 L. T. 598.) No stay will be ordered unless the appeal appear *bonâ fide*, and no stay of proceedings for costs except to put the solicitor on terms to refund if ordered. (*Wilson* v. *Church* (C. A.), 12 Ch. D. 454; see also *Morgan* v. *Elford*, 4 Ch. D. 352; 25 W. R. 136; and *Grant* v. *Banque Franco-Egyptienne* (C. A.), 3 C. P. D. 202; 47 L. J., C. P. 455; 38 L. T. 622; 26 L. R. 669.)

Application to court below in first instance.

17. Wherever under these rules an application may be made either to the court below or to the Court of Appeal, or to a judge of the court below or of the Court of Appeal, it shall be made in the first instance to the court or judge below.

When the application is renewed in the Court of Appeal after being made below the proceeding is not an appeal, and the rule as to discretion does not apply. (*Cooper* v. *Cooper*, 2 Ch. D. 492; 45 L. J., Ch. 667; 24 W. R. 628. But see *Attorney-General* v. *Swansea, &c. Co.*, 9 Ch. D. 46; 48 L. J., Ch. 72; 26 W. R. 840.) An application for a stay pending an appeal to the House of Lords must be made to the Court of Appeal. (*The Khedive*, 5 P. D. 1; 41 L. T. 392; 28 W. R. 364.)

All applications by motion.

18. Every application to a judge of the Court of Appeal shall be by motion, and the provisions of Order LIII.* shall apply thereto.

* Page 244.

Two counsel will be heard for each party. (*Sneesby* v. *Lancashire and Yorkshire Railway Co.* (C. A.), 1 Q. B. D. 42; 45 L. J., Q. B. 1; 33 L. T. 372; 24 W. R. 99.)

*Ords.* LVIII.—LX.

Appeals from inferior courts.

* Page 40.

19. Every judge of the High Court of Justice for the time being shall be a judge to hear and determine appeals from inferior courts under section 45* of the Supreme Court of Judicature Act, 1873. All such appeals (except Admiralty appeals from inferior courts, which until further order shall be assigned as heretofore to the present judge of the Admiralty Court) shall be entered in one list by the officers of the crown office of the Queen's Bench Division; and shall be heard by such divisional court of the Queen's Bench, *Common Pleas, or Exchequer* Divisions, as the presidents of those divisions shall from time to time direct.

Nothing in this order shall affect the validity of any rule or regulation heretofore issued with reference to such appeals by the divisional court formed under the said section (*f*).

Under the former rule for which this rule is substituted, the divisional court consisted of five judges, one for each division, elected by the judges of that division for a year, two at least constituting a court. Under the Act of 1876, s. 17 (p. 77, *ante*), the court will now usually consist of two judges only, from time to time selected by the president of the Queen's Bench Division. It would seem that all appeals from inferior courts will be heard by a divisional court, although this rule and Order LVIIa., Rule 1, are not quite easy to reconcile. A judge of the Chancery Division may sit under the rule. As to the matters in which an appeal will lie, see note to sect. 45, p. 40. For regulations concerning appeals from inferior courts, see Subsidiary Regulations, p. 467.

## ORDER LIX.

### EFFECT OF NON-COMPLIANCE.

Non-compliance to be irregularity only.

Non-compliance with any of these rules shall not render the proceedings in any action void unless the court or a judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the court or judge shall think fit.

Amendment.

2. The court or a judge may at any time, and on such terms as to costs or otherwise as to the court or judge may seem just, amend any defect or error in any proceedings; and all such amendments may be made as may be necessary for the purpose of determining the real question or issue raised by or depending on the proceedings (*g*).

## ORDER LX.

### OFFICERS.

Officers. See Act of 1873, sect. 84.

1. All officers who at the time of the commencement of the said act shall be attached to the Court of Chancery shall be

(*f*) Substituted for former Rule 19, p. 556, by R. S. C., Dec. 1876, Rule 11, p. 565.

(*g*) Added by R. S. C., April, 1880, Rule 44, p. 578.

attached to the Chancery Division of the said High Court; and all officers who at the time of the commencement of the said act shall be attached to the Court of Queen's Bench shall be attached to the Queen's Bench Division of the said High Court; *and all officers who at the time of the commencement of the said act shall be attached to the Court of Common Pleas shall be attached to the Common Pleas Division of the said High Court; and all officers who at the time of the commencement of the said act shall be attached to the Court of Exchequer shall be be attached to the Exchequer Division of the said High Court;** and all officers who at the time of the commencement of the said act shall be attached to the Court of Probate, the Court of Divorce, and the Court of Admiralty respectively, shall be attached to the Probate, Divorce and Admiralty Division of the said High Court.

[* See p. 438.]

Officers to follow appeals.

2. Officers attached to any division shall follow the appeals from the same division, and shall perform in the Court of Appeal analogous duties in reference to such appeals as the registrars and officers of the Court of Chancery usually performed as to re-hearings in the Court of Appeal in Chancery, and as the masters and officers of the Courts of Queen's Bench, Common Pleas and Exchequer respectively performed as to appeals heard by the Court of Exchequer Chamber.

Masters.

3. The office of master of the Supreme Court of Judicature shall be deemed to be substituted for the several offices specified in the first part of the first schedule to the Supreme Court of Judicature (Officers) Act, 1879,† and all enactments and documents referring to any of those offices, or to any of the persons holding them, shall, unless the context otherwise requires, be construed and have effect accordingly (*h*).

† Page 116.

## ORDER LXA. (*i*)

### CENTRAL OFFICE.

Departments of Central Office.

1. The Central Office shall, for the convenient despatch of business, be divided into the departments specified in the first column of the following scheme, and the business and staff of the office shall be distributed among the departments in accordance with that scheme.

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(*h*) Added by R. S. C., December, 1879, Rule 6, p. 571.

(*i*) Rules 1—4 of this Order are added by R. S. C., December, 1879, Rules 7—10, p. 571; Rules 5—12 by R. S. C., April, 1880, Rules 45—52; p. 578 and Rule 8*a* by R. S. C., May, 1880, Rule 5, p. 582.

*Ord.* LX*a*.

SCHEME.

| Name of Department. | Business. | Staff. |
|---|---|---|
| 1. Writ, appearance, and judgment. | The sealing and issue of writs of summons for the commencement of actions.<br>The entry in the cause book of writs of summons, appearances, and judgments.<br>The sealing and issue of notices for service under Order XVI., Rule 18.<br>The receipt and filing of pleadings delivered on entry of judgment.<br>The transaction of all business heretofore conducted in the Record and Writ Office, except such part thereof as is transacted in the Record department. | The clerks employed in similar duties in the Record and Writ Office. Such of the clerks employed in the issue of writs and the entry of appearances and judgments in the Master's offices of the Queen's Bench, Common Pleas and Exchequer Divisions as may be selected by the Masters for the purpose. And such of the officers employed under the Registrars of the Probate, Divorce, and Admiralty Divisions as are selected for transfer to the central office. |
| 2. Summons and Order. | The issue of summonses in the Queen's Bench, Common Pleas, and Exchequer Divisions, and the drawing up of all Orders made either in Court or in Chambers in those divisions. | The clerks employed in the Rule offices, and such of the other clerks in the Master's offices of the Queen's Bench, Common Pleas, and Exchequer Divisions as may be selected by the Masters for the purpose. And such additional clerks as may be appointed from time to time for the purpose. |
| 3. Filing and Record. | The filing of all affidavits to be filed in the Central Office, and all depositions to be used in the Chancery Division, and such other documents as may from time to time be directed by the Masters to be filed, and the making and examination of office copies of documents filed in the department.<br>The custody of all deeds and documents ordered to be left with the Masters.<br>The business heretofore performed in the Re- | The clerks and writers employed in similar duties in the Record and Writ Office with such additional clerks and such writers and messengers as may be from time to time found necessary. |

| Name of Department. | Business. | Staff. |
|---|---|---|
| | port Office under the direction and control of the Clerks of Records and Writs. | |
| 4. Taxing - | The taxation of costs in the Queen's Bench, Common Pleas, and Exchequer Divisions, except such costs as have heretofore been taxed in the Queen's Remembrancer's Office or the Crown Office. | Such of the clerks in the Master's offices of these three divisions as may be selected by the Masters for the purpose. |
| 5. Enrolment - | The business heretofore performed in the Enrolment Office. | The clerks of the Enrolment Office. |
| 6. Judgments - | The registry of judgments, executions, &c. | The clerks employed in similar duties under the Registrar of Judgments. |
| 7. Bills of Sale - | The registry of bills of sale and other duties connected therewith. | The clerks employed in similar duties under the Masters of the Queen's Bench Division as registrars of bills of sale. |
| 8. Married Women's acknowledgments. | The registry of acknowledgments of deeds by married women. | The clerks employed in similar duties under the Registrar of Acknowledgments of deeds by married women. |
| 9. Queen's Remembrancer. | The business heretofore performed in the Queen's Remembrancer's Office. | The clerks of the Queen's Remembrancer's Office. |
| 10. Crown Office | The business heretofore performed in the Crown Office. | The clerks of the Crown Office. |
| 11. Associates - | The business heretofore performed in the Associates' Offices. | The clerks of the three Associates. |

Rota of Masters.

2. It shall be the special duty of one of the Masters to be present at, and control the business of, the central office, and he shall give the necessary directions with respect to questions of practice and procedure relating to the business of the central office. The Masters shall select five of their number to discharge this duty in turn, according to a rota to be fixed by themselves.

Attendance of Masters for taxation.

3. A sufficient number of Masters, not being less than three, shall, except in vacation, attend each day at the central office to tax costs. In vacation one Master shall so attend. The taxing Masters shall be selected according to a rota to be fixed by the masters.

*Ord.* LX*a*.

Taking of oaths.

4. Every Master, and every first and second-class clerk in the Filing and Record department, shall, by virtue of his office, have authority to take oaths and affidavits in the Supreme Court.

Seals of Central Office.

5. The official seals to be used in the central office shall be such as the Lord Chancellor from time to time directs.

All copies, certificates, and other documents appearing to be sealed with a seal of the central office shall be presumed to be office copies or certificates or other documents issued from the central office, and if duly stamped may be received in evidence, and no signature or other formality, except the sealing with a seal of the central office, shall be required for the authentication of any such copy, certificate, or other document.

Enrolment of deeds.

6. All deeds which by any statute or statutory rule are directed or permitted to be enrolled in any of the courts whose jurisdiction has been transferred to the High Court of Justice may be enrolled in the enrolment department of the central office.

Judgments, &c. not to be registered after 2 p.m.

7. The registrar of judgments shall not receive any memorandum of a judgment, execution, lis pendens, order, rule, annuity, crown debt, or other incumbrance, or any memorandum of satisfaction relating to the same, for registration, after the hour of two in the afternoon.

Searches and certificates of search.

8. The clerk of enrolments and each of the following registrars, namely—

The registrar of bills of sale,

The registrar of certificates of acknowledgments of deeds by married women, and

The registrar of judgments

shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the registers or indexes under his custody, and issue a certificate of the result of the search.

A person shall not inspect nor take any extract from any of these registers or indexes, or any document filed in connection therewith, until he has specified in writing to the officer in charge of the register or index the name against which he wishes to search, and has satisfied the officer as to the object of the search.

Searches.

8*a*. The clerk of enrolments and each of the following registrars, namely—

The registrar of bills of sale,

The registrar of certificates of acknowledgments of deeds by married women, and

The registrar of judgments,

shall, on a request in writing giving sufficient particulars, and

on payment of the prescribed fee, cause a search to be made in the registers or indexes under his custody, and issue a certificate of the result of the search (*j*).

Registrars under Bills of Sale Act.

9. The masters shall be the registrar for the purposes of the Bills of Sale Act, 1878, and any one of the masters may perform all or any of the duties of the registrar.

Memorandum of satisfaction of bill of sale.

10. A memorandum of satisfaction may be ordered to be written upon a registered copy of a bill of sale on a consent to the satisfaction, signed by the person entitled to the benefit of the bill of sale, and verified by affidavit, being produced to the registrar, and filed in the central office.

Where this consent cannot be obtained the registrar may, on application by summons, and on hearing the person entitled to the benefit of the bill of sale, or on affidavit of service of the summons on that person, and in either case on proof to the satisfaction of the registrar that the debt (if any) for which the bill of sale was made has been satisfied or discharged, order a memorandum of satisfaction to be written upon a registered copy thereof.

Restrictions on removal of documents from Central Office.

11. No affidavit or record of the court shall be taken out of the central office without the order of a judge or master, and no subpœna for the production of any such document shall be issued.

Forms.

12. Such variations shall be made in the forms prescribed by or under the Supreme Court of Judicature Acts, 1873, 1875, and 1877 as are requisite for giving effect to these rules.

The additional forms contained in the schedule hereto shall be used in or for the purposes of the central office, with such variations as circumstances require.

The masters may from time to time prescribe the use in or for the purpose of the central office of such modified or additional forms as may be deemed expedient.

No modified or additional forms have been formally published, but some slight alterations have been made by the masters, *e. g.*, Form H 23 "on reading the affidavit" has been changed into "on reading the certificate."

## ORDER LXI.

### SITTINGS AND VACATIONS.

Number and time of sittings.

1. The sittings of the Court of Appeal and the sittings in London and Middlesex of the High Court of Justice shall be

(*j*) Substituted for Rule 8 by R. S. C., May, 1880, Rule 5, p. 582.

*Ord.* LXI.

four in every year, viz., the Michaelmas sittings, the Hilary sittings, the Easter sittings, and the Trinity sittings.

Michaelmas, Hilary, Easter, and Trinity sittings.

The Michaelmas sittings shall commence on the 2nd of November, and terminate on the 21st December; the Hilary sittings shall commence on the 11th of January, and terminate on the Wednesday before Easter; the Easter sittings shall commence on the Tuesday after Easter week, and terminate on the Friday before Whitsunday.

The Trinity sittings shall commence on the Tuesday after Whitsun week, and terminate on the 8th of August.

For abolition of terms, see Act of 1873, sect. 26, p. 26, and for the effect of this rule upon the circuits of the judges, see note to that section.

A notice of motion for a day which is not during any sittings is a bad notice. (*Daubeney* v. *Shuttleworth*, 1 Ex. D. 53; 45 L. J., Ex. 177; 34 L. T. 308; 24 W. R. 321.)

Vacations.

2. The vacations to be observed in the several courts and offices of the Supreme Court shall be four in every year, viz., the Long vacation, the Christmas vacation, the Easter vacation, and the Whitsun vacation.

The Long vacation shall commence on the 10th of August, and terminate on the 24th of October. The Christmas vacation shall commence on the 24th of December, and terminate on the 6th of January.

The Easter vacation shall commence on Good Friday, and terminate on Easter Tuesday, and the Whitsun vacation shall commence on the Saturday before Whitsunday, and shall terminate on the Tuesday after Whitsunday.

2a. The Easter vacation in the present year shall, as regards the offices of the registrars and taxing masters of the Chancery Division, commence on Good Friday, and terminate on Saturday the 19th day of April (*i*). [*Spent.*]

For the power to regulate vacations by order in council, see Act of 1873, sect. 27, p. 27.

3. The days of the commencement and termination of each sitting and vacation shall be included in such sitting and vacation respectively.

Opening of offices.

4. The several offices of the Supreme Court shall be open on every day of the year, except Sundays, Good Friday, Monday and Tuesday in Easter week, Whit Monday, Christmas Day, and the next following working day, and all days appointed by proclamation to be observed as days of general fast, humiliation, or thanksgiving.

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(*i*) Added by R. S. C., March, 1879, Rule 10, p. 569. In 1879 Easter Sunday fell upon April 13th.

District registrar.

4a. The offices of each district registrar of the High Court of Justice shall be open on every day and hour in the year on which the offices of the registrar of the County Court of the place in which the district registry is situate are required to be kept open (*k*).

Offices close early on Saturdays.

4*a*. The offices of the Supreme Court (including the judges' chambers) shall close on Saturdays at two o'clock (*l*).

Most of the courts rise at 2 p.m. on Saturday.

Hours of sittings of official referees.

4*b*. The official referees shall sit at least from 10 a.m. to 4 p.m. on every day during the Michaelmas, Hilary, Easter, and Trinity sittings of the High Court of Justice, except on Saturdays, during such sittings, when they shall sit, at least, from 10 a.m. to 2 p.m.; but nothing in this rule shall prevent their sitting on any other days (*m*).

Office hours.

4*c*. The office hours in the several offices of the Supreme Court, other than the summons and order, crown office, and associates departments of the central office, shall be from ten in the forenoon to four in the afternoon, except on Saturday and in vacation, when the offices shall close at two in the afternoon. In the excepted departments the hours shall be from eleven in the forenoon to five in the afternoon, except on Saturday and in vacation, when the hours shall be from eleven in the forenoon to three in the afternoon (*n*).

Whitsun Vacation in Manchester district registry.

4*d*. The office of the district registry at Manchester shall not be open in any year on the five days next following Whit Monday (*o*).

Save as hereby varied, the rules of the Supreme Court, December, 1879, and the rules of the Supreme Court, April, 1880, shall be in force.

Vacation judges of High Court.

5. Two of the judges of the High Court shall be selected at the commencement of each long vacation for the hearing in London or Middlesex during vacation of all such applications as may require to be immediately or promptly heard. Such two judges shall act as vacation judges for one year from their appointment. In the absence of arrangement between the judges, the two vacation judges shall be the two judges last appointed (whether as judges of the said High Court or of any court whose jurisdiction is by the said act transferred

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(*k*) Added by R. S. C., December, 1875, Rule 15, p. 556.

(*l*) Added by R. S. C., February, 1876, Rule 9, p. 559, and numbered 4*a*, although that number was already occupied.

(*m*) Added by R. S. C., February, 1876, Rule 10, p. 559.

(*n*) Added by R. S. C., April, 1880, Rule 53, p. 579.

(*o*) Added by R. S. C., May, 1880, Rule 6, p. 582.

*Ords.* LXI., LXII.

to the said High Court) who have not already served as vacation judges of any such court, and if there shall not be two judges for the time being of the said High Court who shall not have so served, then the two vacation judges shall be the judge (if any) who has not so served and the senior judge or judges who has or have so served once only according to seniority of appointment, whether in the said High Court or such other court as aforesaid. The Lord Chancellor shall not be liable to serve as a vacation judge.

As to urgency, see *Crom* v. *Samuels*, 2 C. P. D. 21; 46 L. J., C. P. 1; 35 L. T. 423; 25 W. R. 45. The Act of 1873, s. 28, makes these sittings obligatory *quà* pressing applications; it also directs that vacation judges of the Court of Appeal shall sit; but no rule as to such sittings has been yet made.

Where a judge takes an informal vacation, urgent applications are made to another judge acting under sect. 51 of Judicature Act, 1873. (*Chapman* v. *Real Property Trust*, 7 Ch. D. 732; 26 W. R. 587.)

Sittings of vacation judges.

6. The vacation judges may sit either separately or together as a divisional court as occasion shall require, and may hear and dispose of all actions, matters, and other business to whichever division the same may be assigned. No order made by a vacation judge shall be reversed or varied except by a divisional court or the Court of Appeal, or a judge thereof, or the judge who made the order. Any other judge of the High Court may sit in vacation for any vacation judge.

Vacation judges may act at any time.

7. The vacation judges of the High Court may dispose of all actions, matters, and other business of an urgent nature during any interval between the sittings of any division of the High Court to which such business may be assigned, although such interval may not be called or known as a vacation.

## ORDER LXII (*p*).

### EXCEPTIONS FROM THE RULES.

Proceedings excepted from rules.

1. Subject to the provisions of this order, nothing in these rules shall affect the procedure or practice in any of the following causes or matters:—

1. Criminal proceedings.
2. Proceedings on the crown side of the Queen's Bench Division.
3. Proceedings on the revenue side of the *Exchequer Division*.
4. Proceedings for divorce or other matrimonial causes.

(*p*) Substituted for former Order LII. by R. S. C., April, 1880, Rules 54—59, p. 579 *et seq.*

2, LXII

Application of certain rules to excepted proceedings.

2. The following rules of the Supreme Court shall, as far as they are applicable, apply to all civil proceedings on the crown side of the Queen's Bench Division, and to all proceedings on the revenue side of the *Exchequer Division;* namely,

Order LV. (Costs).
Order LVI. (Notices and papers, &c.).
Order LVII. (Time).
Order LVIII. (Appeals).

Special case.

3. The parties to any civil proceeding on the crown side of the Queen's Bench Division, or to any proceeding on the revenue side of the *Exchequer Division*, may, at any time after the proceeding is commenced, concur in stating any question or questions of law arising in the proceeding in the form of a special case for the opinion of the court, and the provisions of Order XXXIV. shall, as far as they are applicable, apply to any special case so stated, as if it had been stated in an action.

Amendment.

4. The court or a judge may at any time, and on such terms as to costs or otherwise as to the court or judge may seem just, amend any defect or error in any civil proceeding on the crown side of the Queen's Bench Division, or in any proceeding on the revenue side of the *Exchequer Division*, and all such amendments may be made as may be necessary for the purpose of determining the real question or issue raised by or depending on the proceeding.

Non-compliance with rules.

5. Non-compliance with any rule of practice or procedure for the time being in force with respect to civil proceedings on the crown side of the Queen's Bench Division, or to proceedings on the revenue side of the *Exchequer Division*, shall not render the proceedings void unless the court or a judge so direct, but the proceedings may be set aside either wholly or in part as irregular or amended, or otherwise dealt with in such manner and on such terms as the court or judge may think fit.

Mandamus, quo warranto, and prohibition to be deemed civil proceedings.

6. For the purposes of this order, proceedings in mandamus, quo warranto, and prohibition shall be deemed civil proceedings.

## ORDER LXIII.

### Interpretation of Terms.

Interpretation.

The provisions of the 100th section* of the act shall apply to these rules.

In the construction of these rules, unless there is anything

* Page 63.

*Ord.* LXIII.

in the subject or context repugnant thereto, the several words hereinafter mentioned or referred to shall have or include the meanings following :—

"Person" shall include a body corporate or politic :

"Probate actions" shall include actions and other matters relating to the grant or recall of probate, or of letters of administration other than common form business :

"Proper officer."

"Proper officer" shall, unless and until any rule to the contrary is made, mean an officer to be ascertained as follows :—

(a.) Where any duty to be discharged under the act or these rules is a duty which has heretofore been discharged by any officer, such officer shall continue to be the proper officer to discharge the same :

(b.) Where any new duty is under the act or these rules to be discharged, the proper officer to discharge the same shall be such officer, having previously discharged analogous duties, as may from time to time be directed to discharge the same, in the case of an officer of the Supreme Court, or the High Court of Justice, or the Court of Appeal, not attached to any division, by the Lord Chancellor, and in the case of an officer attached to any division, by the president of the division, and in the case of an officer attached to any judge, by such judge :

"The act."

"The act" and "the said act" shall respectively mean the Supreme Court of Judicature Act, 1873, as amended by this act.

"Central office."

2. In these rules the expression "central office" means the central office of the Supreme Court of Judicature; and the expression "master" means a master of the Supreme Court of Judicature.

In the Supreme Court of Judicature (Officers) Act, 1879, and in Order LX., the expression "officer of the Supreme Court" shall mean any officer paid wholly or partly out of public money who is attached to the Supreme Court, the High Court of Justice, or the Court of Appeal, or to any judge of any of those courts, and is not an officer attached to the person of a judge, and removable by him at pleasure.

The term "these rules" as used in the rules of the Supreme Court shall include any rules made in amendment of or addition to those rules (*q*).

(*q*) Added by R. S. C., April, 1880, Rule 60, p. 580.

## ORDER LXIV (*r*).

### Scheme under Railway Companies Act, 1867.

Annulling of certain rules as to enrolment of scheme under 30 & 31 Vict. c. 127.

61. Rules 21 to 28, both inclusive, of the order of court made under the Railway Companies Act, 1867, are hereby annulled.

Mode of enrolment of scheme.

62. A scheme under the Railway Companies Act, 1867, shall be enrolled in the enrolment department of the central office.

Conditions of enrolment of scheme.

63. A scheme under that act shall not be enrolled unless notice of the order confirming it has at least once in every entire week, reckoned from Sunday morning to Saturday evening, which elapses between the pronouncing of the order and the expiration of thirty days from the pronouncing thereof, been inserted in such two newspapers as shall have been appointed by the judge for the insertion of advertisements under the order made pursuant to that act, nor unless the newspapers containing those notices are produced to the proper officer when the scheme is presented for enrolment.

(*r*) Added by R. S. C., April, 1880, Rules 61—63, p. 581.

# APPENDIX (A). (a)

## PART I.

### Forms of Writs of Summons, &c.

### No. 1.

Title in full.

18 . [*Here put the letter and number.*]
In the High Court of Justice. Between A. B. plaintiff,
Division. and
C. D. and E. F. defendants.

Victoria, by the grace of God, *&c.*

To C. D. of in the county of and E. F. of .

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you *in the Division of our High Court of Justice* (b) in an action at the suit of A. B.; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, *&c.*

*Memorandum to be subscribed on the writ.*

N.B.—This writ is to be served within [*twelve*] calendar months from the date thereof, or, if renewed, from the date of such renewal, including the day of such date, and not afterwards.

The defendant [*or defendants*] may appear hereto by entering an appearance [*or appearances*] either personally or by solicitor *at* (b) *the* [ ] *office at* .

*Indorsements to be made on the writ before issue thereof.*

The plaintiff's claim is for, *&c.*

This writ was issued by E. F., of solicitor for the said plaintiff, who resides at , *or*, this writ was issued by the plaintiff in person who resides at [*mention the city, town, or parish, and also the name of the street and number of the house of the plaintiff's residence, if any*].

*Indorsement to be made on the writ after service thereof.*

This writ was served by X. Y. on L. M. [the defendant *or* one of the defendants], on *Monday*, the day of , 18 .

(Signed) X. Y.

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(a) For a synopsis of these somewhat complicated Appendices, see Table of Contents. They are here printed *verbatim et literatim* from the Queen's printer's copy, except as amended by Rules of Court. Except where such additions or amendments are referred to, the notes are statutory.

(b) Appearances are now entered at the Central Office, and not in a separate office for each Division as when this form was framed.

1a (*b*).

*Specially Indorsed Writ, Order III., Rule* 6.

In the High Court of Justice.
Division. 18 No. .
Between Plaintiff,
and
Defendant.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to of in the of .

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of . And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of , in the year of our Lord one thousand eight hundred and .

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Appearance is to be entered at the Central Office, Royal Courts of Justice, London.

The plaintiff's claim is

The following are the particulars:—

And the sum of £ , [*or* such sum as may be allowed on taxation,] for costs. If the amount claimed is paid to the plaintiff or h solicitor or agent within four days from the service hereof, further proceedings will be stayed.

This writ was issued by of whose address for service is agent for of solicitor for the said plaintiff who reside at

This writ was served by me at on the defendant on the day of 18 .

Indorsed the day of 18 .
(Signed)
(Address)

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1b (*c*).

*Writ for Issue from District Registry.*

In the High Court of Justice.
Division. 18 No. .
(Manchester) District Registry.
Between Plaintiff,
and
Defendant.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to of in the of .

We command you, that within eight days after the service of this writ

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(*b*) Added by R. S. C., April, 1880, Rule 52, p. 579.

(*c*) Ibid.

on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of in the year of our Lord one thousand eight hundred and

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, and not afterwards.

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district*

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

* Insert address of office.

The plaintiff's claim is

This writ was issued by whose address for service† is agent for of solicitor for the said plaintiff who reside at

This writ was served by me at on the defendant on the day of 18 .

Indorsed the day of 18 .

(Signed)

(Address)

† This address must be within the district.

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## No. 1c (*d*).

### *Specially Indorsed Writ for Issue from District Registry.*

In the High Court of Justice.

Division. 18 . No. .

(Manchester) District Registry.

Between Plaintiff,

and

Defendant.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to of in the of

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of in the year of our Lord one thousand eight hundred and

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date and not afterwards.

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district*

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

* Insert address of office.

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(*d*) Added by R. S. C., April, 1880, Rule 52, p. 579.

The plaintiff's claim is
The following are the particulars:—
And the sum of £ , [*or* such sum as may be allowed on taxation,] for costs. If the amount claimed is paid to the plaintiff or h solicitor or agent within four days from the service hereof, further proceedings will be stayed.

* This address must be within the district.

This writ was issued by of whose address for service* is agent for of solicitor for the said plaintiff , who reside at .
This writ was served by me at on the defendant on the day of 18 .
Indorsed the day of 18 .
(Signed)
(Address)

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## No. 2.

### *Writ for Service out of the Jurisdiction, or where Notice in lieu of Service is to be given out of the Jurisdiction.*

18 . [*Here put the letter and number*].
In the High Court of Justice. Between A. B. plaintiff,
Division. and
C. D and E. F. defendants.

VICTORIA, by the grace of God, *&c.*

To C. D. of .

We command you, C. D., that within [*here insert the number of days directed by the court or judge ordering the service or notice*] after the service of this writ [*or notice of this writ, as the case may be*] on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Division of our High Court of Justice in an action at the suit of A. B.; and take notice, that in default of your so doing the plaintiff may [ (*e*) ] proceed therein, and judgment may be given in your absence. Witness, *&c.*

*Memoranda and Indorsements as in Form No.* 1.

*Indorsement to be made on the writ before the issue thereof.*

N.B.—*This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction.*

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## No. 2a (*f*).

### *Specially Indorsed Writ for Service out of the Jurisdiction.*

In the High Court of Justice.
Division. 18 No. .
Between Plaintiff,
and
Defendant.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to of in the of .

* Insert No. of days directed by court or judge.
† If notice of the writ is to

We command you, that within * days after service † of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of . And take notice,

---

(*e*) The words "by leave of the court or a judge," which occurred in this and the following form, are omitted in pursuance of R. S. C., June, 1876, Rule 2.

(*f*) Added by R. S. C., April, 1880, Rule 52, p. 579.

that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of in the year of our Lord one thousand eight hundred and .

N.B.—This writ is to be served within twelve calendar months from the date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Appearance is to be entered at the Central Office, Royal Courts of Justice, London.

The plaintiff's claim is

The following are the particulars:—

And £ [*or* such sum as may be allowed on taxation] for costs. If the amount claimed is paid to the plaintiff or h solicitor or agent within ‡ days from service § hereof, further proceedings will be stayed.

This writ was issued by of whose address for service is agent for of solicitor for the said plaintiff , who reside at

This writ [*or* notice of this writ] was served by me at on the defendant on the day of 18 .

Indorsed the day of 18 .

(Signed)

(Address)

N.B.—This writ is to be used where the defendant, or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is not in British dominions, notice of the writ and not the writ itself is to be served upon him.

be served, insert here "of notice."

‡ Insert No. of days limited for appearance.

§ If notice to be served, insert here "of notice."

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## No. 2b (*g*).

*Writ from District Registry for Service out of the Jurisdiction.*

In the High Court of Justice.

Division. 18 No. .

(Manchester) District Registry.

Between Plaintiff,

and

Defendant.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to of

We command you, that within ‖ days after service of ¶ this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of in the year of our Lord one thousand eight hundred and .

N.B.—This writ is to be served within twelve calendar months from the date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

A defendant who resides or carries on business within the above-named

‖ Insert No. of days directed by court or judge.

¶ If notice of writ is to be served, insert here "notice of."

(*g*) Added by R. S. C., April, 1880, Rule 52, p. 579.

district, must enter appearance at the office of the registrar of that district*

* Insert address of office.

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

The plaintiff's claim is

This writ was issued by of whose address for service† is agent for solicitor for the said plaintiff who reside at

† This address must be within the district.

This writ [*or* notice of this writ] was served by me at on the defendant on the day of 18

Indorsed the day of 18 .

(Signed)

(Address)

N.B.—This writ is to be used where the defendant, or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction. Where the defendant to be served is not a British subject, and is not in British dominions, notice of the writ and not the writ itself is to be served upon him.

---

## No. 2c (*h*).

### *Specially Indorsed Writ from District Registry for Service out of the Jurisdiction.*

In the High Court of Justice.

Division. 18 No.

(Manchester) District Registry.

Between Plaintiff,

and

Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to of in the of

We command you, that within‡ days after service of § this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of

‡ Insert No. of days directed by Court or Judge.

§ If notice of writ is to be served, insert here "notice of."

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of in the year of our Lord one thousand eight hundred and .

N.B.—This writ is to be served within twelve calendar months from the date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district‖

‖ Insert address of office.

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

The plaintiff's claim is

The following are the particulars:—

And £ , [*or* such sum as may be allowed on taxation] for costs. If the amount claimed be paid to the plaintiff or h solicitor or agent

---

(*h*) Added by R. S. C., April, 1880, Rule 52, p. 579.

within* days from service† hereof, further proceedings will be stayed.

This writ was issued by of whose address for service‡ is agent for of solicitor for the said plaintiff , who reside at

This writ [*or* notice of this writ] was served by me at on the defendant on the day of 18 .

Indorsed the day of 18 .

(Signed)

(Address)

* Insert No. of days limited for appearance.

† If notice of writ is to be served, insert here, "of notice."

‡ This address must be within the district.

N.B.—This writ is to be used where the defendant or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction. Where the person to be served is not a British subject, and is not in British dominions, notice of the writ and not the writ itself is to be served upon him.

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## No. 3.

### *Notice of Writ in lieu of Service to be given out of the Jurisdiction.*

18 . [*Here put the letter and number.*]

Between A. B. plaintiff,

and

C. D., E. F., and G. H. defendants.

To G. H. of .

Take notice, that A. B., of , has commenced an action against you, G. H., in the Division of her Majesty's High Court of Justice in England, by writ of that court, dated the day of , A.D. 18 ; which writ is indorsed as follows [*copy in full the indorsements*], and you are required within days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said court to the said action; and in default of your so doing, the said A. B. may [ (*i*) ] proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or by your solicitor at the [ ] office at .

(Signed) A. B. of *&c.*

*or*

X. Y. of *&c.*

Solicitor for A. B.

In the High Court of Justice.
Division.

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## No. 3a (*k*).

### *Notice of Writ in lieu of Service to be given out of the Jurisdiction.*

(District Registry Form.)

18 . No. .

In the High Court of Justice.
Division.
(Manchester) District Registry.

Between Plaintiff,

and

Defendant.

To of .

Take notice, that , of , ha commenced an action against

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(*i*) See note (*e*), *ante*, p. 280.

(*k*) Added by R. S. C., April, 1880, Rule 52, p. 579.

you , in the Division of her Majesty's High Court of Justice in England, by writ of that court, dated the day of , 18 , which writ is indorsed as follows:—

And you are hereby required within days after the receipt of this notice, inclusive of the day of such receipt, to defend this action by causing an appearance to be entered for you thereto, and in default of your so doing the said may proceed therein, and judgment may be given in your absence.

If you reside or carry on business within the above-named district, appearance is to be entered at the office of the registrar for that district*

* Insert address of office.

If you do not either reside or carry on business within that district, appearance is to be entered either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

(Signed)

This notice was served by me at on the defendant on the day of 18 .

Indorsed the day of 18 .

(Signed)

(Address)

N.B.—This notice is to be used where the person to be served is not a British subject and is not in British dominions.

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## A.

### *Writ of Summons in Admiralty Action in rem (l).*

18 . [*Here put the letter and number.*]

In the High Court of Justice.

Admiralty Division.

Between A. B., plaintiff,

and

The owners of the defendants.

VICTORIA, by the grace of God, *&c.*

To the owners and parties interested in the ship or vessel of the port of [*or cargo, &c., as the case may be*].

We command you, that within eight days after the service of this writ, inclusive of the day of such service, you do cause an appearance to be entered for you in the Admiralty Division of our High Court of Justice in an action at the suit of A. B.; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, Hugh MacCalmont, Baron Cairns, Lord High Chancellor of Great Britain, this day of 18 .

*Memorandum to be subscribed on the writ.*

N.B.—This writ is to be served within [*twelve*] calendar months from the date thereof, or, if renewed, from the date of such renewal, including the day of such date, and not afterwards.

The defendant [*or defendants*] may appear hereto by entering an appearance [*or appearances*] either personally or by solicitor at the [ ] office at .

*Indorsements to be made on the writ before issue thereof.*

The plaintiff's claim is for, &c.

This writ was issued by E. F., of , solicitor for the said plaintiff, who resides at , *or*, this writ was issued by the plaintiff in person,

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(*l*) This form was substituted for the original form by R. S. C., Dec. 1875, Rule 2, p. 555.

who resides at [*mention the city, town or parish, and also the name of the street and number of the house of the plaintiff's residence, if any*].

*Indorsement to be made on the writ after service thereof.*

This writ was served by X. Y. [*here state the mode in which the service was effected, whether on the owner, or on the ship, cargo or freight, according to Order IX., Rules* 10, 11 *and* 12, *as the case may be*] on the day of 18 .

(Signed) X. Y.

---

## A (*m*).

### *Warrant of Arrest in Admiralty Action in rem.*

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Admiralty Division.
Between A. B., plaintiff,
and
The owners of the defendants.

VICTORIA, *&c.*

To the marshal of the Admiralty Division of our High Court of Justice, and to all and singular his substitutes [*or* to the collector or collectors of customs at the port of ]. We hereby command you to arrest the ship or vessel of the port of [*and the cargo and freight, &c., as the case may be*], and to keep the same under safe arrest, until you shall receive further orders from us. Witness, Hugh MacCalmont, Baron Cairns, Lord High Chancellor of Great Britain, this day of 18 .

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## 4b (*n*).

### *Writ in Admiralty Actions for Issue from District Registry.*

In the High Court of Justice.
Division. 18 No.
(Manchester) District Registry.
Between A. B., plaintiff,
and
The owners of the defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the owners and parties interested in the ship or vessel of the port of and

We command you, that within eight days after the service of this writ, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of ; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, this day of in the year of our Lord one thousand eight hundred and .

N.B.—This writ is to be served within twelve calendar months from the date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

---

(*m*) This form was originally issued by R. S. C., Dec. 1875, Rule 3, p. 555, and amended to its present shape by R. S. C., Feb. 1876, Rule 4, p. 558.

(*n*) Added by R. S. C., April, 1880, Rule 52, p. 579.

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district*

* Insert address of office.

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

The plaintiff's claim is for .

This writ was issued by of whose address for service† is agent for of solicitor for the said plaintiff who reside at .

† This address must be within the district.

This writ was served by me‡ on the day of 18 .

‡ State mode of service.

Indorsed the day of 18 .

(Signed)
(Address)

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## No. 5.

### *Form of Memorandum for Renewed Writ.*

In the High Court of Justice.
Division.

Between A. B., plaintiff,
and
C. D., defendant.

Seal renewed writ of summons in this action indorsed as follows:—
[*Copy original writ and the indorsements.*]

---

## No. 6.

### *Memorandum of Appearance.*

18 . [*Here put the letter and number.*]

High Court of Justice.
[Chancery] Division.

A. B. *v.* C. D. and others.

Enter an appearance for in this action.
Dated this day of .

X. Y.,
Solicitor for the defendant.

The place of business of X. Y. is .
His address for service is .

*or* [C. D.,
Defendant in person.

The address of C. D. is .
His address for service is .]

The said defendant requires [*or* does not require] a statement of complaint to be filed and delivered.

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No. 7.

[*Here put the letter and number.*]

In the High Court of Justice.
Queen's Bench [*or* Chancery, C. P., *or* &c.] Division.
Between A. B., plaintiff,
and
C. D. and
E. F., defendants.

The defendant C. D. limits his defence to part only of the property mentioned in the writ in this action, that is to say, to the close called "the Big field."

Yours, &c.
G. H.,
Solicitor for the said defendant C. D.

To Mr. X. Y., plaintiff's solicitor.

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# PART II.

## SECTION I.

## GENERAL INDORSEMENTS.

*In Matters assigned by the 34th Section of the Act to the Chancery Division.*

### 1. *Creditor to administer Estate.*

The plaintiff's claim is as a creditor of X. Y., of deceased, to have the [real and] personal estate of the said X. Y. administered. The defendant C. D. is sued as the administrator of the said X. Y. [and the defendants E. F. and G. H. as his co-heirs-at-law].

### 2. *Legatee to administer Estate.*

The plaintiff's claim is as a legatee under the will dated the day of 18 , of X. Y. deceased, to have the [real and] personal estate of the said X. Y. administered. The defendant C. D. is sued as the executor of the said X. Y. [and the defendants E. F. and G. H. as his devisees].

### 3. *Partnership.*

The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and defendant [under articles of partnership dated the day of ], and to have the affairs of the partnership wound up.

### 4. *By Mortgagee.*

The plaintiff's claim is to have an account taken of what is due to him for principal, interest and costs on a mortgage dated the day of made between [*or by deposit of title deeds*], and that the mortgage may be enforced by foreclosure or sale.

### 5. *By Mortgagor.*

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated and made between [*parties*], and to redeem the property comprised therein.

### 6. *Raising Portions.*

The plaintiff's claim is that the sum of £ , which by an indenture of settlement dated , was provided for the portions of the younger children of may be raised.

### 7. *Execution of Trusts.*

The plaintiff's claim is to have the trusts of an indenture dated , and made between , carried into execution.

### 8. *Cancellation or Rectification.*

The plaintiff's claim is to have a deed dated , and made between [*parties*], set aside or rectified.

### 9. *Specific Performance.*

The plaintiff's claim is for specific performance of an agreement dated the day of , for the sale by the plaintiff to the defendant of certain [*freehold*] hereditaments at .

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## SECTION II.

### *Money Claims where no Special Indorsement under Order III., Rule 6.*

| | |
|---|---|
| Goods sold. | The plaintiff's claim is £ for the price of goods sold. [*This form shall suffice whether the claim be in respect of goods sold and delivered, or of goods bargained and sold.*] |
| Money lent. | The plaintiff's claim is £ for money lent [*and interest*]. |
| Several demands. | The plaintiff's claim is £ , whereof £ is for the price of goods sold, and £ for money lent, and £ for interest. |
| Rent. | The plaintiff's claim is £ for arrears of rent. |
| Salary, &c. | The plaintiff's claim is £ for arrears of salary as a clerk [*or as the case may be*]. |
| Interest. | The plaintiff's claim is £ for interest upon money lent. |
| General average. | The plaintiff's claim is £ for a general average contribution. |
| Freight, &c. | The plaintiff's claim is £ for freight and demurrage. |
| | The plaintiff's claim is £ for lighterage. |
| Tolls. | The plaintiff's claim is £ for market tolls and stallage. |
| Penalties. | The plaintiff's claim is £ for penalties under the statute. [ . . . . . ]. |
| Bankers' balance. | The plaintiff's claim is £ for money deposited with the defendant as a banker. |
| Fees, &c. as solicitors. | The plaintiff's claim is £ for fees for work done [*and £ money expended*] as a solicitor. |
| Commission. | The plaintiff's claim is £ for commission earned as [*state character as auctioneer, cotton broker, &c.*]. |

| | | |
|---|---|---|
| The plaintiff's claim is £ | for medical attendances. | Medical attendance, &c. |
| The plaintiff's claim is £ | for a return of premiums paid upon policies of insurance. | Return of premium. |
| The plaintiff's claim is £ | for the warehousing of goods. | Warehouse rent. |
| The plaintiff's claim is £ | for the carriage of goods by railway. | Carriage of goods. |
| The plaintiff's claim is £ | for the use and occupation of a house. | Use and occupation of houses. |
| The plaintiff's claim is £ | for the hire of [*furniture*]. | Hire of goods. |
| The plaintiff's claim is £ | for work done as a surveyor. | Work done. |
| The plaintiff's claim is £ | for board and lodging. | Board and lodging. |
| The plaintiff's claim is £ | for the board, lodging, and tuition of X. Y. | Schooling. |
| The plaintiff's claim is £ | for money received by the defendant as solicitor [*or factor, or collector, or &c.*] of the plaintiff. | Money received. |
| The plaintiff's claim is £ | for fees received by the defendant under colour of the office of . | Fees of office. |
| The plaintiff's claim is £ | for a return of money overcharged for the carriage of goods by railway. | Money overpaid. |
| The plaintiff's claim is £ | for a return of fees overcharged by the defendant as . | |
| The plaintiff's claim is £ | for a return of money deposited with the defendant as stakeholder. | Return of money by stakeholder. |
| The plaintiff's claim is £ | for money entrusted to the defendant as stakeholder, and become payable to plaintiff. | Money won from stakeholder. |
| The plaintiff's claim is £ | for a return of money entrusted to the defendant as agent of the plaintiff. | Money entrusted to agent. |
| The plaintiff's claim is £ | for a return of money obtained from the plaintiff by fraud. | Money obtained by fraud. |
| The plaintiff's claim is £ | for a return of money paid to the defendant by mistake. | Money paid by mistake. |
| The plaintiff's claim is £ | for a return of money paid to the defendant for [*work to be done, left undone; or, a bill to be taken up; not taken up, or, &c.*]. | Money paid for consideration which has failed. |
| The plaintiff's claim is £ | for a return of money paid as a deposit upon shares to be allotted. | |
| The plaintiff's claim is £ | for money paid for the defendant as his surety. | Money paid by surety for defendant. |
| The plaintiff's claim is £ | for money paid for rent due by the defendant. | Rent paid. |
| The plaintiff's claim is £ | upon a bill of exchange accepted [*or indorsed*] for the defendant's accommodation. | Money paid on accommodation bill. |
| The plaintiff's claim is £ | for a contribution in respect of money paid by the plaintiff as surety. | Contribution by surety. |
| The plaintiff's claim is £ | for a contribution in respect of a joint debt of the plaintiff and the defendant, paid by the plaintiff. | By co-debtor. |
| The plaintiff's claim is £ | for money paid for calls upon shares, against which the defendant was bound to indemnify the plaintiff. | Money paid for calls. |
| The plaintiff's claim is £ | for money payable under an award. | Money payable under award. |

Life policy. The plaintiff's claim is £ upon a policy of insurance upon the life of X. Y., deceased.

Money bond. The plaintiff's claim is £ upon a bond to secure payment of £1,000, and interest.

Foreign judgment. The plaintiff's claim is £ upon a judgment of the court, in the Empire of Russia.

Bills of exchange, &c. The plaintiff's claim is £ upon a cheque drawn by the defendant.

The plaintiff's claim is £ upon a bill of exchange accepted [*or drawn or indorsed*] by the defendant.

The plaintiff's claim is £ upon a promissory note made [*or indorsed*] by the defendant.

The plaintiff's claim is £ against the defendant A. B. as acceptor, and against the defendant C. D. as drawer [*or indorser*] of a bill of exchange.

Surety. The plaintiff's claim is £ against the defendant as surety for the price of goods sold.

The plaintiff's claim is £ against the defendant A. B. as principal, and against the defendant C. D. as surety, for the price of goods sold [*or arrears of rent, or for money lent, or for money received by the defendant A. B. as traveller for the plaintiffs, or, &c.*].

*Del credere* agent. The plaintiff's claim is £ against the defendant as a *del credere* agent for the price of goods sold [*or as losses under a policy*].

Calls. The plaintiff's claim is £ for calls upon shares.

Waygoing crops, &c. The plaintiff's claim is £ for crops, tillage, manure [*or as the case may be*] left by the defendant as outgoing tenant of a farm.

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## SECTION III.

### *Indorsement for Costs, &c. [add to the above Forms].*

And £ for costs; and if the amount claimed be paid to the plaintiff or his solicitor within four days [*or if the writ is to be served out of the jurisdiction, or notice in lieu of service allowed, insert the time for appearance limited by the order*] from the service hereof, further proceedings will be stayed.

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## SECTION IV.

### *Damages and other Claims.*

Agent, &c. The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as a traveller.

The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller [*and £ for arrears of wages*].

The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor [*or, &c.*] of the plaintiff [*and £ for money received as factor, &c.*].

Apprentices. The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of X. Y. to the defendant [*or plaintiff*].

Arbitration. The plaintiff's claim is for damages for non-compliance with the award of X. Y.

| | |
|---|---|
| The plaintiff's claim is for damages for assault [*and false imprisonment, and for malicious prosecution*]. | Assault, &c. |
| The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff C. D. | By husband and wife. |
| The plaintiff's claim is for damages for assault by the defendant C. D. | Against husband and wife. |
| The plaintiff's claim is for damages for injury by the defendant's negligence as solicitor of the plaintiff. | Solicitor. |
| The plaintiff's claim is for damages for negligence in the custody of goods [*and for wrongfully detaining the same*]. | Bailment. |
| The plaintiff's claim is for damages for negligence in the keeping of goods pawned [*and for wrongfully detaining the same*]. | Pledge. |
| The plaintiff's claim is for damages for negligence in the custody of furniture lent on hire [*or a carriage lent*], [*and for wrongfully, &c.*]. | Hire. |
| The plaintiff's claim is for damages for wrongfully neglecting [*or refusing*] to pay the plaintiff's cheque. | Banker. |
| The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts. | Bill. |
| The plaintiff's claim is upon a bond conditioned not to carry on the trade of a . | Bond. |
| The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway. | Carrier. |
| The plaintiff's claim is for damages for refusing to carry the plaintiff by railway. | |
| The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway. | |
| The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea. | |
| The plaintiff's claim is for damages for breach of charter-party of ship [*Mary*]. | Charter-party. |
| The plaintiff's claim is for return of household furniture, or &c., or their value, and for damages for detaining the same. | Claim for return of goods; damages. |
| The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c. | Damages for depriving of goods. |
| The plaintiff's claim is for damages for libel. | Defamation. |
| The plaintiff's claim is for damages for slander. | |
| The plaintiff's claim is in replevin for goods wrongfully distrained. | Distress. |
| The plaintiff's claim is for damages for improperly distraining. | Replevin. |
| [*This form shall be sufficient whether the distress complained of be wrongful or excessive, or irregular, and whether the claim be for damages only, or for double value.*] | Wrongful distress. |
| The plaintiff's claim is to recover possession of a house, No. in street, or of a farm called Blackacre, situate in the parish of in the county of . | Ejectment. |
| The plaintiff's claim is to establish his title to [*here describe property*], and to recover the rents thereof. | To establish title and recover rents. |
| [*The two previous forms may be combined.*] | |
| The plaintiff's claim is for dower. | Dower. |
| The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing. | Fishery. |
| The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse [*or a business, or shares, or, &c.*] | Fraud. |

The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of A. B.

Guarantee. The plaintiff's claim is for damages for breach of a contract of guarantee for A. B.

The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.

Insurance. The plaintiff's claim is for a loss under a policy upon the ship "Royal Charter," and freight or cargo [*or for return of premiums*].

[*This form shall be sufficient whether the loss claimed be total or partial.*]

Fire insurance. The plaintiff's claim is for a loss under a policy of fire insurance upon house and furniture.

The plaintiff's claim is for damages for breach of a contract to insure a house.

Landlord and tenant. The plaintiff's claim is for damages for breach of contract to keep a house in repair.

The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.

Medical man. The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.

Mischievous animal. The plaintiff's claim is for damages for injury by the defendant's dog.

Negligence. The plaintiff's claim is for damages for injury to the plaintiff [*or, if by husband and wife, to the plaintiff*, C. D.] by the negligent driving of the defendant or his servants.

The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants.

The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway station, from the defective condition of the station.

Lord Campbell's Act. The plaintiff's claim is as executor of A. B. deceased, for damages for the death of the said A. B., from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.

Promise of marriage. The plaintiff's claim is for damages for breach of promise of marriage.

Quare impedit. The plaintiff's claim is in quare impedit for .

Seduction. The plaintiff's claim is for damages for the seduction of the plaintiff's daughter.

Sale of goods. The plaintiff's claim is for damages for breach of contract to accept and pay for goods.

The plaintiff's claim is for damages for non-delivery [*or* short delivery, *or* defective quality, *or other breach of contract of sale*] of cotton [*or, &c.*].

The plaintiff's claim is for damages for breach of warranty of a horse.

Sale of land. The plaintiff's claim is for damages for breach of a contract to sell [*or purchase*] land.

The plaintiff's claim is for damages for breach of a contract to let [*or take*] a house.

The plaintiff's claim is for damages for breach of a contract to sell [*or purchase*] the lease, with goodwill, fixtures, and stock-in-trade of a public-house.

The plaintiff's claim is for damages for breach of covenant for title [*or for quiet enjoyment, or, &c.*] in a conveyance of land.

Trespass to land. The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [*or cutting his grass, or pulling*

*down his timber, or pulling down his fences, or removing his gate, or using his road or path, or crossing his field, or depositing sand there, or carrying away gravel from thence, or carrying away stones from his river*].

The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [*or house, or mine*]. — Support.

The plaintiff's claim is for damages for wrongfully obstructing a way [*public highway or a private way*]. — Way.

The plaintiff's claim is for damages for wrongfully diverting [*or obstructing, or polluting, or diverting water from*] a watercourse. — Watercourse, &c.

The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [*or into the plaintiff's mine*].

The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.

The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture. — Pasture.

[*This form shall be sufficient whatever the nature of the right to pasture be.*]

The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house. — Light.

The plaintiff's claim is for damages for the infringement of the plaintiff's right of sporting. — Sporting.

The plaintiff's claim is for damages for the infringement of the plaintiff's patent. — Patent.

The plaintiff's claim is for damages for the infringement of the plaintiff's copyright. — Copyright.

The plaintiff's claim is for damages for wrongfully using [*or imitating*] the plaintiff's trade mark. — Trade mark.

The plaintiff's claim is for damages for breach of a contract to build a ship [*or to repair a house, &c.*]. — Work.

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, *&c.*

The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory [*or, &c.*]. — Nuisance.

The plaintiff's claim is for damages from nuisance by noise from the defendant's works [*or stables, or, &c.*].

The plaintiff's claim is for damages for loss of the plaintiff's goods in the defendant's inn. — Innkeeper.

Add to Indorsement:—

And for a mandamus. — Mandamus.

Add to Indorsement:—

And for an injunction. — Injunction.

*Add to Indorsement where claim is to land, or to establish title, or both.*

And for mesne profits. — Mesne profits.

And for an account of rents or arrears of rent. — Arrears of rent.

And for breach of covenant for [*repairs*]. — Breach of covenant.

## SECTION V.

### *Probate.*

1. *By an executor or legatee propounding a will in solemn form.*

The plaintiff claims to be executor of the last will dated the day of of C. W., late of gentleman, deceased, who died on the day of and to have the said will established. This writ is issued against you as one of the next of kin of the said deceased [*or as the case may be*].

2. *By an executor or legatee of a former will, or a next of kin, &c. of the deceased seeking to obtain the revocation of a probate granted in common form.*

The plaintiff claims to be executor of the last will dated the day of of C. D., late of gentleman, deceased, who died on the day of and to have the probate of a pretended will of the said deceased, dated the day of revoked. This writ is issued against you as the executor of the said pretended will [*or as the case may be*].

3. *By an executor or legatee of a will when letters of administration have been granted as an intestacy.*

The plaintiff claims to be executor of the last will of C. D., late of gentleman, deceased, who died on the day of dated the day of .

The plaintiff claims that the grant of letters of administration of the personal estate of the said deceased obtained by you should be revoked and probate of the said will granted to him.

4. *By a person claiming a grant of administration as a next of kin of the deceased, but whose interest as next of kin is disputed.*

The plaintiff claims to be the brother and sole next of kin of C. D., of gentleman, deceased, who died on the day of intestate, and to have as such a grant of administration to the personal estate of the said intestate. This writ is issued against you because you have entered a caveat, and have alleged that you are the sole next of kin of the deceased [*or as the case may be*].

---

## (*g.**) SECTION VI.

* *Sic.*

### *Admiralty.*

1. *Damage to vessel by collision.*

The plaintiffs, as owners of the vessel "Mary," of the port of claim £1,000 against the brig or vessel "Jane," for damage occasioned by a collision which took place in the North Sea in the month of May last.

2. *Damage to cargo by collision.*

The plaintiffs, as owners of the cargo laden on board the vessel "Mary," of the port of , claim £ against the vessel "Jane," for damage done to the said cargo in a collision in the North Sea in the month of May last.

[The two previous forms may be combined.]

3. *Damage to cargo otherwise.*

The plaintiff, as owner of goods laden on board the vessel "Mary," on a voyage from Lisbon to England, claims from the owner of the said vessel £ for damage done to the said goods during such voyage.

4. *In causes of possession.*

The plaintiff, as sole owner of the vessel "Mary," of the port of , claims to have possession decreed to him of the said vessel.

5. The plaintiff claims possession of the vessel "Mary," of the port of , as owner of 48-64th shares of the said vessel, against C. D., owner of 16-64th shares of the said vessel.

6. The plaintiff, as part owner of the vessel "Mary," claims against C. D., part owner and his shares in the said vessel £ , as part of the earnings of the said vessel due to plaintiff.

7. The plaintiff, as owner of 48-64th shares of the vessel "Mary," of the port of , claims possession of the said brig as against C. D. the master thereof.

8. The plaintiff, under a mortgage, dated the day of , claims against the vessel "Mary" £ , being the amount of his mortgage thereon, and £ for interest.

9. The plaintiff, as assignee of a bottomry bond, dated the day of , and granted by C. D., as master of the vessel "Mary," of the port of , to A. B., at St. Thomas's in the West Indies, claims £ against the vessel "Mary," and the cargo laden thereon.

10. *By a part owner of a vessel.*

The plaintiff, as owner of 24-64th shares of the vessel "Mary," being dissatisfied with the management of the said vessel by his co-owners, claims that his co-owners shall give him a bond in £ for the value of the plaintiff's said shares in the said vessel.

11. The plaintiffs, as owners of the derelict vessel "Mary," of the port of , claim to be put in possession of the said vessel and her cargo.

12. *By salvors.*

The plaintiffs, as the owners, master and crew of the vessel "Caroline," of the port of , claim the sum of £ for salvage services performed by them to the vessel "Mary," off the Goodwin Sands, on the day of .

13. *Claim for towage.*

The plaintiffs, as owners of the steam tug "Jane," of the port of , claim £ , for towage services performed by the said steam-tug to the vessel "Mary," on the day of .

14. *Seamen's wages.*

The plaintiffs, as seamen on board the vessel "Mary," claim £ for wages due to them, as follows (1), the mate £30, for two months' wages, from the day of .

15. *For necessaries.*

The plaintiffs claim £ for necessaries supplied to the vessel "Mary," at the port of Newcastle-on-Tyne, delivered on the day of , and the day of .

---

## SECTION VII.

### *Special Indorsements under Order III., Rule* 6.

1. The plaintiff's claim is for the price of goods sold. The following are the particulars:—

| | £ | *s.* | *d.* |
|---|---|---|---|
| 1873—31st December: | | | |
| Balance of account for butcher's meat to this date | 35 | 10 | 0 |
| 1874—1st January to 31st March: | | | |
| Butcher's meat supplied | 74 | 5 | 0 |
| | 109 | 15 | 0 |
| 1874—1st February.—Paid | 45 | 0 | 0 |
| Balance due | £64 | 15 | 0 |

2. The plaintiff's claim is against the defendant A. B. as principal, and against the defendant C. D. as surety, for the price of goods sold to A. B. The following are the particulars:—

1874—2nd February. Guarantee by C. D. of the price of woollen goods, to be supplied to A. B.

| | £ | s. | d. |
|---|---|---|---|
| 2nd February—To goods | 47 | 15 | 0 |
| 3rd March—To goods | 105 | 14 | 0 |
| 17th March—To goods | 14 | 12 | 0 |
| 5th April—To goods | 34 | 0 | 0 |
| | £202 | 1 | 0 |

3. The plaintiff's claim is against the defendant, as maker of a promissory note. The following are the particulars:—

Promissory note for £250, dated 1st January, 1874, made by defendant, payable four months after date.

| | £ |
|---|---|
| Principal | 250 |
| Interest | |

4. The plaintiff's claim is against the defendant A. B. as acceptor, and against the defendant C. D. as drawer, of a bill of exchange. The following are the particulars:—

Bill of exchange for £500, dated 1st January, 1874, drawn by defendant C. D. upon and accepted by defendant A. B., payable three months after date.

| | £ |
|---|---|
| Principal | 500 |
| Interest | |

5. The plaintiff's claim is for principal and interest due upon a bond. The following are the particulars:—

Bond dated 1st January, 1873. Condition for payment of £100 on the 26th December, 1873.

| | £ |
|---|---|
| Principal due | 50 |
| Interest | |

6. The plaintiff's claim is for principal and interest due under a covenant. The following are the particulars:—

Deed dated covenant to pay £100 and interest.

| | £ |
|---|---|
| Principal due | 80 |
| Interest | |

## SECTION VIII.

### *Indorsements of Character of Parties.*

Executors.

The plaintiff's claim is as executor [*or administrator*] of C. D., deceased, for, &c.

The plaintiff's claim is against the defendant A. B., as executor [*or, &c.*] of C. D., deceased, for, &c.

The plaintiff's claim is against the defendant A. B., as executor of X. Y., deceased, and against the defendant C. D., in his personal capacity for, &c.

By husband and wife, executrix.

The claim of the plaintiff C. D., is as executrix of X. Y., deceased, and the claim of the plaintiff A. B., as her husband for

Against husband and wife, executrix.

The claim of the plaintiff is against the defendant C. D., as executrix of the defendant C. D., deceased, and against the defendant A. B., as her husband, for

Trustee in bankruptcy.

The plaintiff's claim is as trustee under the bankruptcy of A. B., for

The plaintiff's claim is against the defendant as trustee under the bankruptcy of A. B., for

Trustees.

The plaintiff's claim is as [*or the plaintiff's claim is against the defendant as*] trustee under the will of A. B. [*or under the settlement upon the marriage of* A. B. *and* X. Y., *his wife*].

Public officer.

The plaintiff's claim is as public officer of the Bank, for

The plaintiff's claim is against the defendant as public officer of the Bank, for

The plaintiff's claim is against the defendant A. B. as principal, and against the defendant C. D. as public officer of the Bank, as surety for

Heir and devisee.

The plaintiff's claim is against the defendant as heir-at-law of A. B., deceased.

Qui tam action.

The plaintiff's claim is against the defendant C. D. as heir-at-law, and against the defendant E. F. as devisee of lands under the will of A. B.

The plaintiff's claim is as well for the Queen as for himself, for

# APPENDIX (B).

FORM 1.

*Notice by Defendant to Third Party.*

18 . [*Here put the letter and number.*]
Notice filed , 18 .

In the High Court.
Queen's Bench Division.
Between A. B., plaintiff,
and
C. D., defendant.

To Mr. X. Y.

Take notice, that this action has been brought by the plaintiff against the defendant [as surety for M. N., upon a bond conditioned for payment of £2,000 and interest to the plaintiff.

The defendant claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are (his co-surety under the said bond, *or*, also surety for the said M. N., in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the day of , A.D. )].

*Or* [as acceptor of a bill of exchange for £500, dated the day of , A.D. , drawn by you before and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation].

*Or* [to recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1,000 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent].

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant C. D., you must cause an appearance to be entered for you within eight days after service of this notice.

In default of your so appearing, you will not be entitled in any future proceeding between the defendant C. D. and yourself to dispute the validity of the judgment in this action whether obtained by consent or otherwise.

(Signed) E. T.

*Or*,

X. Y.,
Solicitor for the defendant,

Appearance to be entered at . E. T.

FORM 2.

18 . [*Here put the letter and number.*]

In the High Court.
Queen's Bench Division.

Between A. B., plaintiff,
and
C. D., defendant.

The plaintiff confesses the defence stated in the paragraph of the defendant's statement of defence [*or*, of the defendant's further statement of defence].

---

FORM 3.

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

Between A. B., plaintiff,
and
C. D., defendant.

The particulars of the plaintiff's complaint herein, and of the relief and remedy to which he claims to be entitled, appear by the indorsement upon the writ of summons.

---

FORM 4.

"To the within-named X. Y.

"Take notice, that if you do not appear to the within counter-claim "of the within-named C. D. within eight days from the service of this "defence and counter-claim upon you, you will be liable to have judg-"ment given against you in your absence.

"Appearances are to be entered at "

---

FORM 5.

*Notice of Payment into Court.*

In the High Court of Justice. 18 . B. No.
Q. B. Division.

A. B. *v.* C. D.

Take notice, that the defendant has paid into court £ and says that that sum is enough to satisfy the plaintiff's claim [*or the plaintiff's claim for, &c.*].

To Mr. X. Y.,
the plaintiff's solicitor.

Z.,
Defendant's solicitor.

---

FORM 6.

*Acceptance of Sum paid into Court.*

In the High Court of Justice. 18 . B. No.
Q. B. Division.

A. B. *v.* C. D.

Take notice, that the plaintiff accepts the sum of £ paid by you into court in satisfaction of the claim in respect of which it is paid in.

---

FORM 7.

*Form of Interrogatories.*

In the High Court of Justice. 18 . B. No.
Division.

Between A. B., plaintiff,
and
C. D., E. F., and G. H., defendants.

Interrogatories on behalf of the above-named [*plaintiff*, or *defendant* C. D.] for the examination of the above-named [*defendants* E. F. *and* G. H., or *plaintiff*].

1. Did not, &c.
2. Has not, &c.

&c. &c. &c.

[*The defendant* E. F. *is required to answer the interrogatories numbered* .]

[*The defendant* G. H. *is required to answer the interrogatories numbered* .]

---

FORM 8.

*Form of Answer to Interrogatories.*

In the High Court of Justice. 18 . B. No.
Division.

Between A. B., plaintiff,
and
C. D., E. F., and G. H., defendants.

The answer of the above-named defendant E. F. to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named E. F., make oath and say as follows:—

.....
.....

---

FORM 9.

*Form of Affidavit as to Documents.*

In the High Court of Justice. 18 . B. No.
Division.

Between A. B., plaintiff,
and
C. D., defendant.

I, the above-named defendant C. D., make oath and say as follows:—

1. I have in my possession or power the documents relating to the

matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. That [*here state upon what grounds the objection is made, and verify the facts as far as may be*].

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power on [*state when*].

6. That [*here state what has become of the last-mentioned documents, and in whose possession they now are*].

7. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

---

## FORM 10.

### *Form of Notice to produce Documents.*

In the High Court of Justice.
Q. B. Division.

A. B. *v.* C. D.

Take notice, that the [*plaintiff or defendant*] requires you to produce for his inspection the following documents referred to in your [*statement of claim, or defence, or affidavit, dated the day of* A.D. ]

*Describe documents required.*

X. Y.,
Solicitor to the

To Z.,
Solicitor for

---

## FORM 10A. (*a*)

### *Notice to produce (General Form).*

In the High Court of Justice. 18 . No.
Division.
Between Plaintiff,
and
Defendant.

Take notice, that you are hereby required to produce and show to the court on the trial of this action all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this action, and particularly

Dated the day of 18 .

(Signed) of agent for
Solicitor for the above-named .

To the above-named
h solicitor or agent.

---

(*a*) Added by R. S. C., April, 1880.

## FORM 11.

### *Form of Notice to inspect Documents.*

In the High Court of Justice.
Q. B. Division.
A. B. *v.* C. D.

Take notice, that you can inspect the documents mentioned in your notice of the day of A.D. [*except the deed numbered in that notice*] at my office on Thursday next, the instant, between the hours of 12 and 4 o'clock.

*Or*, that the [*plaintiff or defendant*] objects to giving you inspection of the documents mentioned in your notice of the day of A.D. , on the ground that [*state the ground*]:—

---

## FORM 12.

### *Form of Notice to admit Documents.*

In the High Court of Justice.
Division.
A. B. *v.* C. D.

Take notice, that the plaintiff [*or defendant*] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [*or plaintiff*], his solicitor or agent, at , on , between the hours of ; and the defendant [*or plaintiff*] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent or delivered, were so served, sent or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated, &c.

To E. F., solicitor [*or agent*] for defendant [*or plaintiff*].
G. H., solicitor [*or agent*] for plaintiff [*or defendant*].

[*Here describe the documents, the manner of doing which may be as follows:*—]

ORIGINALS.

| Description of Documents. | Dates. |
|---|---|
| Deed of covenant between A. B. and C. D. first part, and E. F. second part | January 1, 1848. |
| Indenture of lease from A. B. to C. D. | February 1, 1848. |
| Indenture of release between A. B., C. D. first part, &c. | February 2, 1848. |
| Letter, defendant to plaintiff | March 1, 1848. |
| Policy of insurance on goods by ship "Isabella," on voyage from Oporto to London | December 3, 1847. |
| Memorandum of agreement between C. D., captain of said ship, and E. F. | January 1, 1848. |
| Bill of exchange for 100*l.* at three months, drawn by A. B. on and accepted by C. D., indorsed by E. F. and G. H. | May 1, 1849. |

COPIES.

| Description of Documents. | Dates. | Original or Duplicate served, sent or delivered, when, how and by whom. |
|---|---|---|
| Register of baptism of A. B. in the parish of X. ..... | January 1, 1848 | |
| Letter—plaintiff to defendant | February 1, 1848 | Sent by General Post, February 2, 1848. |
| Notice to produce papers .... | March 1, 1848 .. | Served March 2, 1848, on defendant's attorney by E. F. of —— |
| Record of a Judgment of the Court of Queen's Bench in an action, J. S. *v.* J. N..... | Trinity Term, 10th Vict. | |
| Letters Patent of King Charles II. in the Rolls Chapel .... | January 1, 1680 | |

## FORM 13.

### *Setting down Special Case.*

18 . B. No.

In the High Court of Justice.
Division.
Between A. B., plaintiff,
and
C. D. and others, defendants.

Set down for argument the special case filed in this action on the day of , 18 .

X. Y., Solicitor for .

---

## FORM 14.

### *Form of Notice of Trial.*

In the High Court of Justice.
Division.
A. B. *v.* C. D.

Take notice of trial of this action [*or of the issues in this action ordered to be tried*] by a judge and jury [*or as the case may be*] in Middlesex [*or as the case may be*], for the day of next.

X. Y., plaintiff's solicitor [*or as the case may be*].

Dated
To Z., defendant's solicitor [*or as the case may be*].

---

FORM 15.

*Form of Certificate of Officer after Trial by a Jury.*

30th November, 18 . 18 . No.
In the High Court of Justice.
Division.
Between A. B., Plaintiff,
and
C. D., Defendant.

I certify that this action was tried before the Honourable Mr. Justice and a special jury of the county of on the 12th and 13th days of November, 18 .

The jury found [*state findings*].

The judge directed that judgment should be entered for the plaintiff for £ with costs of summons [*or as the case may be*].

A. B.,
[Title of Officer.]

---

FORM 16.

*Affidavit of Scripts.*

In the High Court of Justice.
Probate Division.
Between A. B., Plaintiff,
and
C. D., Defendant.

I, A. B., of , in the county of , party in this cause, make oath and say, that no paper or parchment writing, being or purporting to be or having the form or effect of a will or codicil or other testamentary disposition of E. F., late of , in the county of , deceased, the deceased in this cause, or being or purporting to be instructions for, or the draft of, any will, codicil, or testamentary disposition of the said E. F., has at any time, either before or since his death, come to the hands, possession, or knowledge of me, this deponent, or to the hands, possession, or knowledge of my solicitors in this suit, so far as is known to me, this deponent, save and except the true original last will and testament of the said deceased now remaining in the principal registry of this court [*or* hereunto annexed, *or as the case may be*], the said will bearing date the day of 18 [*or as the case may be*], also save and except [*here add the dates and particulars of any other testamentary papers of which the deponent has any knowledge*].

(Signed) A. B.

Sworn at on the day of 18 .

Before me,
[*Person authorized to administer oaths under the Act.*]

---

FORM 17. (*a*)

*Notice of Motion.*

In the High Court of Justice.
Division. 18 . No.
Between Plaintiff,
and
Defendant.

Take notice, that the court will be moved on day the

---

(*a*) Added by R. S. C., April, 1880.

day of 18 , at o'clock in the forenoon, or so soon thereafter as counsel can be heard, by that

Dated the day of 18 .

(Signed) of agent for solicitor for the

To

---

FORM 18 (*a*).

*Notice of Entry of Demurrer for Argument.*

In the High Court of Justice.

Division. 18 . No.

Between Plaintiff,

and

Defendant.

Take notice, that I have this day entered for argument the demurrer of the to the in this action.

Dated the day of 18 .

(Signed) of agent for solicitor for the

To

---

FORM 19 (*a*).

*Notice of Discontinuance.*

In the High Court of Justice.

Division. 18 . No.

Between Plaintiff,

and

Defendant.

Take notice, that the plaintiff hereby*

†

Dated the day of 18

(Signed) of agent for solicitor for the plaintiff.

To

* "Wholly discontinues this action," or "withdraws so much of his claim in this action as relates to," &c.

† If not against all the defendants, add "as against the defendant," &c.

---

FORM 20 (*a*).

*Notice of Entry of Appearance.*

In the High Court of Justice.

Division. 18 . No.

Between Plaintiff,

and

Defendant.

Take notice, that have this day entered an appearance at the Central Office, Royal Courts of Justice [*or* at the office of the registrar of the district registry] for the defendant to the writ of summons in this action.

The said defendant require [*or* do not require] delivery of a statement of claim.

Dated the day of 18 .

(Signed) of agent for solicitor for the defendant.

To

---

(*a*) Added by R. S. C., April, 1880.

FORM 21 (*a*).

*Notice of Cross-examination of Deponents at Trial.*

In the High Court of Justice.
Division. 18 . No.
Between Plaintiff,
and
Defendant.

Take notice, that the intend at the trial of this action to cross-examine the several deponents named and described in the schedule hereto on their affidavits therein specified.

And also take notice, that you are hereby required to produce the said deponents for such cross-examination before the court aforesaid.

Dated the day of 18 .

(Signed)
Agent for
of
Solicitor for the .

To

The SCHEDULE above referred to.

| Name of Deponent. | Address and Description. | Date when Affidavit filed. |
|---|---|---|
| | | |

FORM 22 (*a*).

*Notice of Renewal of Writ of Execution.*

In the High Court of Justice.
Division. 18 . No.
Between Plaintiff,
and
Defendant.

Take notice, that the writ of issued in this action directed to the sheriff of and bearing date the day of 18 , has been renewed for one year from the day of 18 .

Dated the day of 18 .

(Signed)
of
Agent for
Solicitor for the

To the sheriff of

FORM 23 (*a*).

*Notice as to Stock under Order XLVI.*

To the [*here add the name of the company*].

Take notice, that the stock comprised in and now subject to the trusts of the [*settlement, will, &c.*] referred to in the affidavit to which this notice is annexed consists of the following (that is to say) [*here specify the stock*].

(*a*) Added by R. S. C., April, 1880.

This notice is intended to stop the transfer of the stock only, and not the receipt of dividends [*or*, the receipt of the dividends on the stock as well as the transfer of the stock].

(Signed) A. B.

---

## AFFIDAVITS.

### FORM 24 (*a*).

*Affidavit of Service of Summons.*

In the High Court of Justice.
Division. 18 . No.
Between Plaintiff,
and
Defendant.

I of solicitor for the above-named make oath and say as follows:—

I did on the day of 18 , before the hour of in the noon, serve the above-named in this action with a true copy duly stamped of the summons hereto annexed marked (A), by leaving it at the of the said situate with there

Sworn at
this
day of 18 .

Before me

This affidavit is filed on behalf of the

---

### FORM 25 (*a*).

*Affidavit on Registration of Bill of Sale.*

18 . No. .

In the High Court of Justice.
Division.

I, , of , make oath and say as follows:—

1. The paper writing hereto annexed and marked (A.) is a true copy of a bill of sale, and of every schedule or inventory thereto annexed or therein referred to, and of every attestation of the execution thereof, as made and given and executed by .

2. The said bill of sale was made and given by the said , on the day of , 18 .

3. I was present and saw the said duly execute the said bill of sale on the said day of , 18 .

4. The said resides at [*state residence at time of swearing affidavit*] and is [*state occupation*].

5. The name subscribed to the said bill of sale as that of the witness attesting the due execution thereof is in the proper handwriting of me this deponent.

6. I am a solicitor of the Supreme Court, and reside at .

7. Before the execution of the said bill of sale by the said I fully explained to the nature and effect thereof.

Sworn at , the day of
, 18 .

Before me, .

This affidavit is filed on behalf of .

---

(*a*) Added by R. S. C., April, 1880.

## FORM 26 (*a*).

### *Affidavit in support of Garnishee Order.*

18 . No. .

In the High Court of Justice.
Division.
Between Judgment Creditor,
and
Judgment Debtor.

I, , of , the above-named judgment creditor [*or* solicitor for the above-named judgment creditor] make oath and say as follows :—

1. By a judgment of the court given in this action, and dated the day of 18 , it was adjudged that I [*or* the above-named judgment creditor] should recover against the above-named judgment debtor the sum of £ , and costs to be taxed, and the said costs were by a master's certificate dated the day of 18 allowed at £ .

2. The said still remains unsatisfied to the extent of and interest amounting to £ .

3. * is indebted to the judgment debtor in the sum of £ or thereabouts.

4. The said is within the jurisdiction of this court.

Sworn at , the day of 18 .

Before me, .

This affidavit is filed on behalf of the .

* Name, address, and description of garnishee.

---

## FORM 27 (*a*).

### *Affidavit on Interpleader.*

18 . No. .

In the High Court of Justice.
Division.
Between Plaintiff,
and
Defendant.

I, , of , the defendant in the above action, make oath and say as follows:—

1. The writ of summons herein was issued on the day of 18 , and was served on me on the day of 18 . I have not yet delivered a statement of defence herein.

2. The action is brought to recover . The said †in my possession, but I claim no interest therein.

3. The right to the said subject-matter of this action has been and is claimed‡ by one who§ .

4. I do not in any manner collude with the said or with the above-named plaintiff, but I am ready to bring into court or to pay or dispose of the said in such manner as the court may order or direct.

Sworn at , the day of 18 .

Before me, .

This affidavit is filed on behalf of the .

† "is" or "are."

‡ If claim in writing, make the writing an exhibit.

§ State expectation of suit, or that he has already sued.

---

(*a*) Added by R. S. C., April, 1880.

FORM 28 (*a*).

*Affidavit as to Stock under Order XLVI.*

In the matter of [*here state the nature of the document comprising the stock, and add the date and other particulars, so far as known to the deponent, sufficiently to identify the document*];

and

In the matter of the Act of Parliament, 5 Vict. c. 5.

I, , of , make oath and say that according to the best of my knowledge, information, and belief, I am [*or, if the affidavit is made by the solicitor,* A. B. of is] beneficially interested in the stock comprised in the [*settlement, will, &c.*] above mentioned, which stock, according to the best of my knowledge and belief, now consists of the stock specified in the notice hereto annexed.

This affidavit is filed on behalf of A. B., whose address is [*state address for service*].

---

(*a*) Added by R. S. C., April, 1880.

# APPENDIX (C).

## No. 1.—Account stated.

18 . B. No.

In the High Court of Justice.
Division.
Writ issued 3rd August, 1875.
Between A. B. ..... Plaintiff,
and
C. D. ..... Defendant.

*Statement of Claim.*

Claim. 1. Between the 1st of January and the 28th of February, 1875, the plaintiff supplied to the defendant various articles of drapery; and accounts and invoices of the goods so supplied, and their prices, were from time to time furnished to the defendant, and payments on account were from time to time made by the defendant.

2. On the 28th of February, 1875, a balance remained due to the plaintiff of 75*l.* 9*s.*, and an account was on that day sent by the plaintiff to the defendant showing that balance.

3. On the 1st of March following, the plaintiff's collector saw the defendant at his house, and asked for payment of the said balance, and the defendant then paid him by cheque 25*l.* on account of the same. The residue of the said balance, amounting to 50*l.* 9*s.*, has never been paid.

The plaintiff claims £ .

The plaintiff proposes that this action should be tried in the county of .

---

## No. 2.—Administration of Estate.

[1876. B. No. 233.]

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]
Writ issued 22nd December, 1876.
In the matter of the estate of A. B., deceased.
Between E. F. ..... Plaintiff,
and
G. H. ..... Defendant.

*Statement of Claim.*

Claim. 1. A. B., of K., in the county of L., died on the 1st of July, 1875, intestate. The defendant G. H. is the administrator of A. B.

2. A. B. died entitled to lands in the said county for an estate of fee simple, and also to some other real estate and to personal estate. The defendant has entered possession of the real estate of A. B., and received

the rents thereof. The legal estate in such real estate is outstanding in mortgages under mortgages created by the intestate.

3. A. B. was never married; he had one brother only, who pre-deceased him without having been married, and two sisters only, both of whom also pre-deceased him, namely M. N. and P. Q. The plaintiff is the only child of M. N. and the defendant is the only child of P. Q.

The plaintiff claims—

1. To have the real and personal estate of A. B. administered in this court, and for that purpose to have all proper directions given and accounts taken.
2. To have a receiver appointed of the rents of his real estate.
3. Such further or other relief as the nature of the case may require.

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[1876. B. No. 233.]

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]

In the matter of the estate of A. B., deceased.

Between E. F. ..... Plaintiff,
and
G. H. ..... Defendant.

*Statement of Defence.*

Defence.

1. The plaintiff is an illegitimate child of M. N. She was never married.

2. The intestate was not entitled to any real estate at his death, except a copyhold estate situate in the county of R., and held of the manor of S. According to the custom of that manor, when the copyholder dies without issue, and without leaving a brother, or issue of a deceased brother, the copyhold descends to his elder sister and her issue in preference to his younger sister and her issue. P. Q. was older than M. N.

3. The personal estate of A. B. was not sufficient for the payment of his debts, and has all been applied in payment of his funeral and testamentary expenses, and part of his debts.

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[1876. B. No. 233.]

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]

In the matter of the estate of A. B., deceased.

Between E. F. ..... Plaintiff,
and
G. H. ..... Defendant.

*Reply.*

Reply.

The plaintiff joins issue with the defendant upon his defence.

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No. 3.

[1876. B. No. 234.]

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]

Writ issued 22nd December, 1876.

In the matter of the estate of A. B., deceased.
Between E. F. ..... Plaintiff,
and
G. H. ..... Defendant.

Claim.

1. A. B., of K., in the county of L., duly made his last will, dated the 1st day of March, 1873, whereby he appointed the defendant and M. N. (who died in the testator's lifetime) executors thereof, and devised and bequeathed his real and personal estate to and to the use of his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain 21, or a daughter who should attain that age, or marry, upon trust as to his real estate for the person who would be the testator's heir-at-law, and as to his personal estate for the persons who would be the testator's next of kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The testator died on the 1st day of July, 1873, and his will was proved by the defendant on the 4th of October, 1873. The plaintiff has not been married.

3. The testator was at his death entitled to real and personal estate; the defendant entered into the receipt of the rents of the real estate, and got in the personal estate; he has sold some part of the real estate.

The plaintiff claims—

1. To have the real and personal estate of A. B. administered in this court, and for that purpose to have all proper directions given and accounts taken.
2. Such further or other relief as the nature of the case may require.

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[1876. B. No. 234.]

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]

In the matter of the estate of A. B., deceased.
Between E. F. ..... Plaintiff,
and
G. H. ..... Defendant.

*Statement of Defence.*

Defence.

1. A. B.'s will contained a charge of debts; he died insolvent; he was entitled at his death to some real estate which the defendant sold, and which produced the net sum of 4,300*l.*, and the testator had some personal estate which the defendant got in and which produced the net sum of 1,204*l.* The defendant applied the whole of the said sums and the sum of 84*l.*, which the defendant received from rents of the real estate, in the payment of the funeral and testamentary expenses and some of the debts of the testator. The defendant made up his accounts and sent a copy thereof to the plaintiff on the 10th of January, 1875, and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer. The defendant submits that the plaintiff ought to pay the costs of this action.

[1876. B. No. 234.]

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]

In the matter of the estate of A. B., deceased.
Between E. F. ..... Plaintiff,
and
G. H. ..... Defendant.

*Reply.*

The plaintiff joins issue with the defendant upon his defence. Reply.

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No. 4.

[1876. B. No. 235.]

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]

In the matter of the estate of W. H., deceased.
Writ issued 22nd December, 1876.
Between A. B. and C. his wife ..... Plaintiffs,
and
E. F. and G. H. ..... Defendants.

*Statement of Claim.*

1. W. H., of H., in the county of L., duly made his last will, dated the 19th day of March, 1861, whereby he appointed the defendants the executors thereof, and bequeathed to them all his personal estate in trust, to call in, sell, and convert the same into money, and thereout to pay his debts and funeral and testamentary expenses, and to divide the ultimate surplus into three shares, and to pay one of such three shares to each of his two children, T. H., and E., the wife of E. W., and to stand possessed of the remaining third share upon trust for the children of the testator's son J. H., in equal shares, to be divided among them when the youngest of such children should attain the age of 21 years. And the testator devised his real estates to the defendants upon trust until the youngest child of the said J. H. should attain the age of 21 years, to pay one-third part of the rents thereof to the said T. H., and one other third part thereof to the said E. W., and to accumulate the remaining third part by way of compound interest, and so soon as the youngest child of the said J. H. should attain the age of 21 years, to sell the said real estates, and out of the proceeds of such sale to pay the sum of 1,000*l.* to the said T. H., and to invest one moiety of the residue in manner therein mentioned, and stand possessed thereof in trust to pay the income thereof to the said E., the wife of the said E. W., during her life for her separate use, and after her death for her children, the interests of such children being contingent on their attaining the age of 21 years, and to divide the other moiety of such proceeds of sale and the accumulations of the third share of rents thereinbefore directed to be accumulated among such of the children of the said J. H. as should be then living, and the issue of such of them as should be then dead, in equal shares per stirpes. Claim.

2. The testator died on the 25th day of April, 1873, and his said will was proved by the defendants in the month of June, 1873.

The testator died possessed of one third share in a leaschold colliery called the Paradise Colliery, and in the engines, machinery, stock in trade, book debts, and effects belonging thereto. He was also entitled to real estate, and other personal estate.

4. The testator left T. H. and E., the wife of E. W., him surviving. J. H. had died in the testator's lifetime, leaving four children, and no more. The plaintiff C. B. is the youngest of the children of J. H., and attained the age of 21 years on the 1st of June, 1871. The other three children of J. H. died without issue in the lifetime of the testator.

5. E. W. has several children, but no child has attained the age of 21 years.

6. T. H. is the testator's heir-at-law.

7. The defendants have not called in, sold, and converted into money the whole of the testator's personal estate, but have allowed a considerable part thereof to remain outstanding; and in particular the defendants have not called in, sold, or converted into money the testator's interest in the said colliery, but have, from the death of the testator to the present time, continued to work the same in partnership with the other persons interested therein. The estate of the testator has sustained considerable loss by reason of such interest not having been called in, sold, or converted into money.

8. The defendants did not upon the death of the testator sell the testator's furniture, plate, linen, and china, but allowed the testator's widow to possess herself of a great part thereof, without accounting for the same, and the same has thereby been lost to the testator's estate.

9. The defendants have not invested the share of the testator's residuary personal estate given by his will to the children of the testator's son J. H., and have not accumulated one-third of the rents and profits of his real estate as directed by the said will, but have mixed the same share and rents with their own moneys, and employed them in business on their own account.

10. The defendants have sold part of the real estates of the testator, but a considerable part thereof remains unsold.

11. A receiver ought to be appointed of the outstanding personal estate of the testator, and the rents and profits of his real estate remaining unsold.

The plaintiffs claim:—

1. That the estate of the said testator may be administered, and the trusts of his will carried into execution under the direction of the court.
2. That it may be declared that the defendants, by carrying on the business of the said colliery instead of realizing the same, have committed a breach of trust, and that the parties interested in the testator's estate are entitled to the value of the testator's interest in the said partnership property as it stood at the testator's death, with interest thereon, or at their election to the profits which have been made by the defendants in respect thereof since the testator's death, whichever shall be found most for their benefit.
3. That an account may be taken of the interest of the testator in the said colliery, and in the machinery, book debts, stock, and effects belonging thereto, according to the value thereof, at the testator's death, and an account of all sums of money received by or by the order, or for the use of the defendants, or either of them, on account of the testator's interest in the said colliery, and that the defendants may be ordered to make good to the estate of the testator the loss arising from their not having realized the interest of the testator in the said colliery within a reasonable time after his decease.
4. That an account may be taken of all other personal estate of the testator come to the hands of the defendants, or either of them, or to the hands of any other person by their or either of their order, or for their or either of their use, or which, but for their wilful neglect or default, might have been so received; and an account of the rents and profits of the testator's real estate, and

the moneys arising from the sale thereof, possessed or received by or by the order, or for the use of the defendants, or either of them.

5. That the real estate of the testator remaining unsold may be sold under the direction of the court.

6. That the defendants may be decreed, at the election of the parties interested in the testator's estate, either to pay interest at the rate of 5*l.* per cent. per annum upon such moneys belonging to the estate of the testator as they have improperly mixed with their own moneys and employed in business on their own account, and that half-yearly rests may be made in taking such accounts as respects all moneys which by the said will were directed to be accumulated, or to account for all profits by the employment in their business of the said trust money.

7. That a receiver may be appointed of the outstanding personal estate of the testator, and to receive the rents and profits of his real estate remaining unsold.

8. Such further or other relief as the nature of the case may require.

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[1876. B. 235.]

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]

Between A. B. and C. his wife ..... Plaintiffs,
and
E. F. and G. H. ..... Defendants.

*Statement of Defence of the above-named Defendants.*

Defence. 1. Shortly after the decease of the testator, the defendants, as his executors, possessed themselves of and converted into money the testator's personal estate, except his share in the colliery mentioned in the plaintiff's statement of claim. The moneys so arising were applied in payment of part of the testator's debts and funeral and testamentary expenses, but such moneys were not sufficient for the payment thereof in full.

2. The Paradise Colliery was, at the testator's decease, worked by him in partnership with J. Y. and W. Y. and T. Y., both since deceased. No written articles of partnership had been entered into, and for many years the testator had not taken any part in the management of the said colliery, but it was managed exclusively by the other partners, and the defendants did not know with certainty to what share therein the testator was entitled.

3. Upon the death of the testator the defendants endeavoured to ascertain the value of the testator's share in the colliery, but the other partners refused to give them any information. The defendants thereupon had the books of the colliery examined by a competent accountant, but they had been so carelessly kept that it was impossible to obtain from them any accurate information respecting the state of the concern; it was, however, ascertained that a considerable sum was due to the testator's estate.

4. Between the death of the testator and the beginning of the year 18 , the defendants made frequent applications to J. Y., W. Y. and T. Y. for a settlement of the accounts of the colliery.

Such applications having proved fruitless, the defendants, in January, 1874, filed their bill of complaint in the Court of Chancery against J. Y., W. Y. and T. Y., praying for an account of the partnership dealings between the testator and the defendants thereto, and that the partnership might be wound up under the direction of the court.

5. The said T. Y. died in the year 18 , and the suit was revived against J. P. and T. S., his executors. The suit is still pending.

6. As to the Paradise Colliery, the defendants have acted to the best of their judgment for the benefit of the testator's estate, and they deny being under any liability in respect of the said colliery not having been realized. They submit to act under the direction of the court as to the further prosecution of the said suit, and generally as to the realization of the testator's interest in the said colliery.

7. With respect to the statements in the eighth paragraph in the statement of claim, the defendants say, that upon the death of the testator, they sold the whole of his furniture, linen and china, and also all his plate, except a few silver tea-spoons of very small value, which were taken possession of by his widow, and they applied the proceeds of such sale as part of the testator's personal estate, and they deny being under any liability in respect of such furniture, linen, china and plate.

8. With respect to the statements in paragraph seven of the statement of claim, the defendants say that all moneys received by them, or either of them, on account of the testator's estate, were paid by them to their executorship account at the bank of Messrs. H. & Co., and until the sale of the testator's real estate took place as hereinafter mentioned, the balance to their credit was never greater than was necessary for the administration of the trusts of the testator's will, and they therefore were unable to make any such investment or accumulation as directed by the testator's will. No moneys belonging to the testator's estate have ever been mixed with the moneys of the defendants, or either of them, nor has any money of the testator's been employed in business since the testator's decease, except that his share in the said colliery, for the reason hereinbefore appearing, has not been got in.

9. In 1874, after the plaintiff C. B. had attained her age of 21 years, the defendant sold the real estate of the testator for sums amounting to 15,080*l.*, and no part thereof remains unsold. They received the purchase-moneys in December, 1874, and on the day of , 1875, they paid such proceeds into court to the credit of this action, with the exception of 500*l.* retained on account of costs incurred and to be incurred by them.

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In the High Court of Justice. [1876. B. 235.]
Chancery Division.
[*Name of Judge.*]

Between A. B. and C. his wife.....Plaintiffs,
and
E. F. and G. H.....Defendants.

*Reply.*

The plaintiff joins issue with the defendants upon their defence.

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## No. 5.—AGENT.

In the High Court of Justice. 187 . B. No.
Division.
Writ issued 3rd August, 1875.

Between A. B. and Company.....Plaintiffs,
and
E. F. and Company.....Defendants.

*Statement of Claim.*

Claim. 1. The plaintiffs are manufacturers of artificial manures, carrying on business at , in the county of .

2. The defendants are commission agents, carrying on business in London.

3. In the early part of the year , the plaintiffs commenced, and down to the 187 , continued to consign to the defendants, as their agents, large quantities of their manures for sale, and the defendants sold the same, and received the price thereof and accounted to the plaintiffs therefor.

4. No express agreement has ever been entered into between the plaintiffs and the defendants with respect to the terms of the defendants' employment as agents. The defendants have always charged the plaintiffs a commission at per cent. on all sales effected by them, which is the rate of commission ordinarily charged by del credere agents in the said trade. And the defendants, in fact, always accounted to the plaintiffs for the price, whether they received the same from the purchasers or not.

5. The plaintiffs contend that the defendants are liable to them as del credere agents, but if not so liable are under the circumstances hereinafter mentioned liable as ordinary agents.

6. On the , the plaintiffs consigned to the defendants for sale a large quantity of goods, including tons of .

7. On or about the , the defendants sold tons of , part of such goods, to one G. H. for £ , at three months' credit, and delivered the same to him.

8. G. H. was not, at that time, in good credit and was in insolvent circumstances, and the defendants might, by ordinary care and diligence, have ascertained the fact.

9. G. H. did not pay for the said goods, but before the expiration of the said three months for which credit had been given was adjudicated a bankrupt, and the plaintiffs have never received the said sum of £ , or any part thereof.

The plaintiffs claim:—

1. Damages to the amount of £ .

2. Such further or other relief as the nature of the case may require.

The plaintiffs propose that this action should be tried in the county of .

[Title as in claim, omitting date of issue of writ.]

### *Statement of Defence.*

Defence. 1. The defendants deny that the said commission of per cent. mentioned in paragraph 4 of the claim is the rate of commission ordinarily charged by del credere agents in the said trade, and say that the same is the ordinary commission for agents other than del credere agents, and they deny that they ever accounted to the plaintiffs for the price of any goods, except after they had received the same from the purchasers.

2. The defendants deny that they were ever liable to the plaintiffs as del credere agents.

3. With respect to the eighth paragraph of the plaintiffs' statement of claim, the defendants say that at the time of the said sale to the said G. H., the said G. H. was a person in good credit. If it be true that the said G. H. was then in insolvent circumstances (which the defendants do not admit), the defendants did not and had no reason to suspect the same, and could not by ordinary care or diligence have ascertained the fact.

[Title as in defence.]

### *Reply.*

Reply. The plaintiffs join issue upon the defendants' statement of defence.

## No. 6.—BILL OF EXCHANGE.

In the High Court of Justice. 187 . B. No.
Division.

Writ issued 3rd August, 1876.

Between A. B. and C. D. .....Plaintiffs,
and
E. F. and G. H. .....Defendants.

### *Statement of Claim.*

Claim.

1. Messrs. M. N. & Co. on the day of drew a bill of exchange upon the defendants for £ payable to the order of the said Messrs. M. N. & Co. three months after date, and the defendants accepted the same.

2. Messrs. M. N. & Co. indorsed the bill to the plaintiffs.

3. The bill became due on the , and the defendants have not paid it.

The plaintiffs claim:—

[Title.]

### *Statement of Defence.*

Defence.

1. The bill of exchange mentioned in the statement of claim was drawn and accepted under the circumstances hereinafter stated, and except as hereinafter mentioned there never was any consideration for the acceptance or payment thereof by the defendants.

2. Shortly before the acceptance of the said bill it was agreed between the said Messrs. M. N. & Co., the drawers thereof, and the defendants, that the said Messrs. M. N. & Co. should sell and deliver to the defendants free on board ship at the port of 1,200 tons of coal during the month of , and that the defendants should pay for the same by accepting the said Messrs. M. N. & Co.'s draft for £ at six months.

3. The said Messrs. M. N. & Co. accordingly drew upon the defendants, and the defendants accepted the bill of exchange now sued upon.

4. The defendants did all things which were necessary to entitle them to delivery by the said Messrs. M. N. & Co. of the said 1,200 tons of coals under their said contract, and the time for delivery has long since elapsed; but the said Messrs. M. N. & Co. never delivered the same, or any part thereof, but have always refused to do so, whereby the consideration for the defendants' acceptance has wholly failed.

5. The plaintiffs first received the said bill, and it was first indorsed to them after it was overdue.

6. The plaintiffs never gave any value or consideration for the said bill.

7. The plaintiffs took the said bill with notice of the facts stated in the second, third, and fourth paragraphs hereof.

[Title.]

### *Reply.*

Reply.

1. The plaintiff joins issue upon the defendants' statement of defence.

2. The plaintiff gave value and consideration for the said bill in manner following, that is to say, on the day of 187 , the said Messrs. M. N. & Co. were indebted to the plaintiff in about £ , the balance of an account for goods sold from time to time by him to them. On that day they ordered of the plaintiff further goods to the value of about £ , which last-mentioned goods have since been delivered by him to them. And at the time of the order for such last-mentioned

goods it was agreed between Messrs. M. N. & Co. and the plaintiff, and the order was received upon the terms, that they should indorse and hand over to him the bill of exchange sued upon, together with various other securities on account of the said previous balance, and the price of the goods so ordered on that day. The said securities, including the bills sued upon, was thereupon on the same day indorsed and handed over to the plaintiff.

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## No. 7.—BILL OF EXCHANGE AND CONSIDERATION.

187 . B. No. .

In the High Court of Justice.
Division.

Writ issued 3rd August, 1876.

Between A. B. and C. D. ..... Plaintiffs,
and
E. F. and G. H. ..... Defendants.

### *Statement of Claim.*

Claim.

1. The plaintiffs are merchants, factors, and commission agents, carrying on buiness in London.

2. The defendants are merchants and commission agents, carrying on business at Hong Kong.

3. For several years prior to the 1875, the plaintiffs had been in the habit of consigning goods to the defendants for sale, as their agents, and the defendants had been in the habit of consigning goods to the plaintiffs for sale, as their agents; and each party always received the price of the goods sold by him for the other; and a balance was from time to time struck between the parties, and paid.

On the of , the moneys so received by the defendants for the plaintiffs, and remaining in their names, largely exceeded the moneys received by the plaintiffs for the defendants, and a balance of £ was accordingly due to the plaintiffs from the defendants.

4. On or about the 1875, the plaintiffs sent to the defendants a statement of the accounts between them, showing the said sum as the balance due to the plaintiffs from the defendants; and the defendants agreed to the said statement of accounts as correct, and to the said sum of £ as the balance due by them to the plaintiffs, and agreed to pay interest on such balance if time were given to them.

5. The defendants requested the plaintiffs to give them three months' time for payment of the said sum of £ , and the plaintiffs agreed to do so upon the defendants accepting the bills of exchange hereinafter mentioned.

6. The plaintiffs thereupon on the drew two bills of exchange upon the defendants, one for £ and the other for £ , both payable to the order of the plaintiffs three months after date, and the defendants accepted the bills.

The said bills became due on the 187 , and the defendants have not paid the bills, or either of them, nor the said sum of £ .

The plaintiffs claim:—

£ and interest to the date of judgment.

The plaintiffs propose that the action should be tried in London.

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No. 8.

187 . B. No.

In the High Court of Justice.
Division.
Writ issued [ ].
[THE "IDA."] (*a*).
Between A. B. and C. D. ..... Plaintiffs,
and
E. F. and G. H. ..... Defendants.

*Statement of Claim.*

Claim. [1. The "Ida" is a vessel of which no owner or part owner was, at the time of the institution of this cause, domiciled in England or Wales (*b*).]

2. In the month of February, 1873, Messrs. L. and Company, of Alexandria, caused to be shipped 6,110 ardebs of cotton seed on board the said vessel, then lying in Port Said (Egypt), and the then master of the vessel received the same, to be carried from Port Said to Hull, upon the terms of three bills of lading, signed by the master, and delivered to Messrs. L. and Company.

3. The three bills of lading, being in form exactly similar to one another, were and are, so far as is material to the present case, in the words, letters and figures following, that is to say:—

"Shipped in good order and well conditioned by L. & Co., Alexandria (Egypt), in and upon the good ship called the 'Ida,' whereof is master for the present voyage Ambrozio Chiapella, and now riding at anchor in the port of Port Said (Egypt) and bound for Hull, six thousand one hundred and ten ardebs cotton seed being marked and numbered as in the margin, and are to be delivered in the like good order and well conditioned at the aforesaid Port of Hull (the act of God, the Queen's enemies, fire and all and every other dangers and accidents of the seas, rivers, and navigation of whatever nature and kind soever, save risk of boats so far as ships are liable thereto excepted), unto order or to assigns paying freight for the said goods at the rate of (19*s.*) say nineteen shillings sterling in full per ton of 20 cwt. delivered with £10 gratuity. Other conditions as per charter-party, dated London, 4th October, 1872, with primage and average accustomed. In witness whereof the master or purser of the said ship hath affirmed to three bills of lading all of this tenor and date, the one of which three bills being accomplished the other two to stand void. Dated in Port Said (Egypt) 6th February, 1873. 100 dunnage mats. Fifteen working days remain for discharging."

4. The persons constituting the firm of Messrs. L. and Company are identical with the members of the plaintiffs' firm.

5. The vessel sailed on her voyage to Hull, and duly arrived there on or about the 7th day of May, 1873.

6. The cotton seed was delivered to the plaintiffs but not in as good order and condition as it was in when shipped at Port Said; but was delivered to the plaintiffs greatly damaged.

7. The deterioration of the cotton seed was not occasioned by any of the perils or causes in the bills of lading excepted.

8. By reason of the premises the plaintiffs lost a great part of the

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(*a*) In Admiralty action insert name of ship.

(*b*) A statement to this effect may be inserted if the action be under sect. 6 of the Admiralty Act, 1861.

value of the said cotton seed, and were put to great expense in and about keeping, warehousing, and improving the condition of the said cotton seed, and in and about having the same surveyed.

The plaintiffs claim the following relief:—

1. £ for damages, [(b) and the condemnation of the said vessel and the defendant and his bail in the same]:
2. Such further relief as the nature of the case requires.

[Title.]

*Defence.*

Statement of:—

Defence.

1. They deny the truth of the allegations contained in the sixth, seventh, and eighth articles of the said petition.
2. The deterioration, if any, to the cotton seed was occasioned by the character and quality of the cotton seed when shipped on board the "Ida," and by the inherent qualities of the cotton seed, and by shipping water in a severe storm which occurred on the day of in latitude during the voyage, or by some or one of such causes.

[Title.]

*Reply.*

Reply.

The plaintiffs join issue upon the statement of defence.

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## No. 9.—BOTTOMRY.

187 . B. No.

In the High Court of Justice.
Admiralty Division.

Writ issued [ ].

THE "ONWARD."

Between A. B. and C. D. .. .. .. Plaintiffs,
and
E. F. and G. H. .. .. .. Defendants.

*Statement of Claim.*

Claim.

1. The "Onward," a ship of 933 tons register, or thereabouts, belonging to the United States of America, whilst on a voyage from Moulmein to Queenstown or Falmouth, for orders, and from thence to a port of discharge in the United Kingdom or on the continent, between Bordeaux and Hamburg, both ports inclusive, laden with a cargo of teak timber, was compelled to put into Port Louis, in the island of Mauritius, in order to repair and refit.
2. The master of the "Onward," being without funds or credit at Port Louis, and being unable to pay the expense of the said repairs, and the necessary disbursements of the said ship at Port Louis, so as to enable the said ship to resume and prosecute her voyage, and after having communicated with his owners and with the owners and consignees of the cargo, was compelled to resort to a loan of 24,369 dollars on bottomry of the said ship, her cargo and freight, for the purpose of enabling him to pay the said expenses and disbursements, which sum Messrs. H. and Company, of Port Louis, at the request of the master by public advertisement, advanced to the said master at and after the rate of 128 dollars for every 100 dollars advanced; and accordingly the said master, by a bond

(b) This may be inserted if the action be an Admiralty action in rem.

of bottomry, dated the 13th of October, 1870, by him duly executed in consideration of the sum of 24,369 dollars, Mauritius currency, paid to him by the said Messrs. H. and Company, bound himself, and the said ship and her cargo, namely, about 940 tons of teak timber, and her freight, to pay unto Messrs. H. and Company, their assigns, or order or indorsees, the said sum of 24,369 dollars with the aforesaid maritime premium thereon, within twenty days next after the arrival of the "Onward" at her port of discharge, from the said intended voyage, the said payment to be made, both in capital and interest, in British sterling money, at and after the rate of 4*s.* for every dollar, with a condition, that in case the said ship and cargo should be lost, during her voyage from Port Louis to Queenstown or Falmouth, for orders, and thence to her port of discharge in the United Kingdom or on the Continent between Bordeaux and Hamburg, both ports inclusive, then, that the said sum of 24,369 dollars, and maritime premium thereon, should not be recoverable.

3. The "Onward" subsequently proceeded on her voyage, and on the 7th of February, 1871, arrived with her cargo on board at the port of Liverpool, which was her port of discharge.

4. The bond was duly indorsed and assigned to the plaintiffs.

5. The ship has been sold by order of the court, and the proceeds of the sale thereof have been brought into court, and the freight has also been paid into court.

6. The said sum of 24,369 dollars, with the maritime premium thereon, still remain due to the plaintiffs. By a decree, made on the 10th of May, 1871, the court pronounced for the validity of the bond, so far as regarded the ship and freight, and condemned the proceeds of the ship and freight in the amount due on the bond. The principal and premium still remain owing to the plaintiffs, and the proceeds of the said ship and her freight, available for payment thereof, are insufficient for such payment.

The plaintiffs claim:—

1. That the court pronounce for the validity of the bond, so far as regards the cargo.
2. That the court condemn the defendants and their bail in so much of the amount due to the plaintiffs on the bond, for principal, maritime premium, and for interest, from the time when such principal and premium ought to have been paid, as the proceeds of the ship and freight available for payment of the bond shall be insufficient to satisfy, and in costs.
3. Such further relief as the nature of the case requires.

[Title.]

*Defence.*

Defence.

The defendants say that the—

1. Several averments in the second article of the statement contained are respectively untrue, except the averment that the bottomry bond therein mentioned was given and executed.

3. The "Onward" proceeded on the voyage in the first paragraph of the claim mentioned, under a charter-party made between the defendants and the owners of the vessel, who resided at New York. And the cargo in the said paragraph mentioned belonged to the defendants, and was shipped at Moulmein, by Messrs. T., F. and Company, of Moulmein, consigned to the defendants.

4. When the "Onward" put into Port Louis, the master placed his ship in the hands of Messrs. H. and Company, the persons in the second paragraph of the claim mentioned, and the repairs and disbursements in the said second article mentioned were made, directed, and expended under the orders, management, and on the credit of said Messrs. H. and Company, who at the outset contemplated the necessity of securing themselves by the hypothecation of the ship, freight, and cargo.

5. The master of the "Onward" and Messrs. H. and Company did not communicate to the said shippers of the cargo, or to the defendants, who carried on business at Glasgow, as the master knew, the intention of hypothecating the ship, freight and cargo, or the circumstances which might render such hypothecation advisable or necessary, but on the contrary, without reasonable cause or excuse, abstained from so doing, although the comparatively small value of the ship and freight to be earned, rendered it all the more important that such communication should have been made.

6. A reasonable and proper time was not allowed to elapse between the advertisements for the bottomry loan and the acceptance of Messrs. H. and Company's offer to make such loan.

[Title.]

*Reply.*

Reply.

1. The plaintiffs say that the defendants, since the 31st day of December, 1868, have been the only persons forming the firm of T., F. and Co., of Moulmein, mentioned in the third paragraph of the defence.

2. After the master of the "Onward" put into Port Louis as aforesaid, he employed Messrs. H. and Company, in the claim mentioned, as his agents, and by his directions they, by letter, communicated to the defendants' firms at Moulmein and Glasgow the circumstances of the ship's distress, and the estimated amount of her repairs.

3. The said Messrs. H. and Company, shortly after the said ship was put into their hands at Port Louis, offered the said master, in case he should require them to do so, to make the necessary advances for the ship's repairs, and to take his draft at 90 days' sight on Messrs. B. Brothers, of London, at the rate of 5 per cent. discount for the amount of the advances, together with a bottomry bond on ship, cargo, and freight as collateral security, the bond to be void should the draft be accepted. The said master and the said Messrs. H. and Company, by letter, communicated to the owners of the "Onward" the circumstances of the said ship's distress, and the aforesaid offer of the said Messrs. H. and Company, and the said master, by his letter, requested the said owners to give him their directions on the subject. The said owners, shortly after receiving such letters, by letter communicated with the defendants at Glasgow, and forwarded to them copies of the said lastly-mentioned letters of the said master, and of the said Messrs. H. and Company.

4. The defendants' houses at Moulmein and Glasgow respectively received the letters referred to in the second paragraph of this reply in time to have communicated with the said master at Port Louis before the giving of the said bottomry bond.

5. The defendants received the said copies of letters referred to in paragraph 4 of this reply, in time for them to have communicated thereon with the said master at Port Louis before the giving of the said bond.

6. The defendants did not at any time answer the said communications of the said Messrs. H. and Company, or in any way communicate, or attempt to communicate, with the said master, or to direct him not to give, or to prevent him from giving, the said bottomry bond on the said cargo.

7. The said bond was duly advertised for sale, and was subsequently, and after a proper interval had elapsed, sold by auction in the usual way. There were several bidders at the sale, and the said Messrs. H. and Company were the lowest bidders in premium, and the said bond was knocked down to them. The said bond was not advertised for until the said ship was ready for sea, and up to that time the master of the said ship had expected to hear from her owners, and had hoped to be put in

funds, and had not finally determined to resort to bottomry of the said ship, or her cargo, or freight.

8. Save as herein appears, the plaintiffs deny the truth of the several allegations contained in the said answer.

[NOTE.—The facts stated in this reply should, in general, be introduced by amendment into the statement of claim.]

[Title.]

*Rejoinder.*

Rejoinder. The defendants join issue upon the plaintiffs' reply.

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## No. 10.—CHARTER-PARTY.

187 . B. No. .

In the High Court of Justice.
Division.

Writ issued 3rd August, 1876.

Between A. B. and C. D.....Plaintiffs,
and
E. F. and G. H. .....Defendants.

*Statement of Claim.*

1. The plaintiffs were, on the 1st August, 1874, the owners of the steamship "British Queen."

2. On the 1st August, 1874, the ship being then in Calcutta, a charter-party was there entered into between John Smith, the master, on behalf of himself and the owners of the said ship, of the one part, and the defendants of the other part.

3. By the said charter-party it was agreed, amongst other things, that the defendants should be entitled to the whole carrying power of the said steamship for the period of four months certain, commencing from the said 1st August, 1874, upon a voyage or voyages between Calcutta and Mauritius and back; that the defendants should pay for such use of the said steamship to the plaintiffs' agents at Calcutta, monthly, the sum of £1,000; that the charter should terminate at Calcutta; and that if, at the expiration of the said period of four months, the said steamship should be upon a voyage, then the defendants should pay pro ratâ for the hire of the ship up to her arrival at Calcutta, and the complete discharge of her cargo there.

4. The "British Queen" made several voyages in pursuance of the said charter-party, and the first three monthly sums of £1,000 each were duly paid.

5. The period of four months expired on the 1st December, 1874, and at that time the steamship was on a voyage from Mauritius to Calcutta. She arrived at Calcutta on the 13th December, and the discharge of her cargo there was completed on the 16th December, 1874.

6. The plaintiff's agents at Calcutta called upon the defendants to pay to them the fourth monthly sum of £1,000, and a sum of £500 for the hire of the steamship from the 1st to the 16th December, 1874, but the defendants have not paid any part of the said sums.

The plaintiffs claim—

The sum of £1,500, and interest upon £1,000, part thereof, from the 1st December, 1874, until judgment.

The plaintiffs propose that this action should be tried in London.

[Title.]

## *Statement of Defence.*

Defence.

1. By the charter-party sued upon it was expressly provided that if any accident should happen to, or any repairs should become necessary to the engines or boilers of the said steamship, the time occupied in repairs should be deducted from the period of the said charter, and a proportionate reduction in the charter money should be made.

2. On the repairs became necessary to the engines and boilers of the steamship, and ten days were occupied in effecting such repairs.

3. On the an accident happened to the engines of the steamship at Mauritius, and two days were occupied in effecting the repairs necessary in consequence thereof.

4. The defendants are therefore entitled to a reduction in the charter-money of 400*l.*

Counter-claim.

By way of set-off and counter-claim the defendants claim as follows:—

5. By the charter-party it was expressly provided that the charterers should furnish funds for the steamship's necessary disbursements, except in the port of Calcutta, without any commission or interest on any sum so advanced.

6. The defendants paid for the necessary disbursements of the ship in the port of Mauritius between the and the 1874, sums amounting in all to 625*l.* 14*s.* 6*d.*

7. The charter-party also contained an express warranty that the steamship was at the date thereof capable of steaming nine knots an hour on a consumption of 30 tons of coal a day, and it was further provided by the charter-party that the charterers should provide coal for the use of the said steamship.

8. The steamship was at the date of the charter-party only capable of steaming less than eight knots to an hour, and that only on a consumption of more than 35 tons of coal a day.

9. In consequence of the matters mentioned in the last paragraph, the steamship finally arrived at Calcutta at least 15 days later, and remained under charter at least 15 days longer than she would otherwise have done. She was also during the whole period of the said charter at sea for a much larger number of days than she would otherwise have been, and consumed a much larger quantity of coal on each of such days than she would otherwise have done, whereby the defendants were obliged to provide for the use of the steamship much larger quantities of coal than they would otherwise have been.

The defendants claim:—

£ damages in respect of the matters stated in this set-off and counter-claim.

[Title.]

## *Reply.*

Reply.

1. The plaintiff joins issue upon the second, third and fourth paragraphs of the defendants' statement of defence.

2. With respect to the alleged set-off stated in paragraph 6 the plaintiff does not admit the correctness of the amount therein stated. And all sums advanced by them for disbursements were paid or allowed to them by the plaintiffs by deducting the amount thereof from the third monthly sum of £1,000 paid (subject to such deduction) to the plaintiffs' agents at Calcutta by the defendants on or about the 12th November, 1874.

3. With respect to the alleged breach of warranty and the alleged damages therefrom stated in the 7th, 8th, and 9th paragraphs, the plaintiffs say that the steamship was at the date of the charter-party capable of steaming nine knots an hour on a consumption of 30 tons of

coal a day. If the steamship did not, during the said charter, steam more than eight knots an hour, and that on a consumption of more than 35 tons a day, as alleged (which the plaintiffs do not admit), it was in consequence of the bad and unfit quality of the coals provided by the defendants for the ship's use.

[Title.]

*Joinder of Issue.*

Rejoinder. The defendants join issue upon the plaintiffs' reply to their set-off and counter-claim.

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## No. 11.—COLLISION.

187 . B. No.

In the High Court of Justice.
Admiralty Division.
Writ issued [ ].

THE "AMERICAN."

Between A. B. and C. D. .. .. .. .. Plaintiffs,
and
E. F. and G. H. .. .. .. .. Defendants.

*Statement of Claim.*

Claim. 1. Shortly before 8 a.m. on the 9th of December, 1874, the brigantine "Katie," of 194 tons register, of which the plaintiffs were owners, manned by a crew of eight hands all told, whilst on a voyage from Dublin to St. John's, Newfoundland, in ballast, was in latitude about 46° N., and longitude 40° 42′ W., by account.

2. The wind at such time was about W. by S., a strong breeze, and the weather was clear, and the "Katie" was under double-reefed mainsail, reefed mainstaysail, middle staysail, lower topsail, reefed fore staysail, and jib, sailing full and by on the port tack, heading about N.W. ½ N., and proceeding at the rate of about five knots and a half per hour.

3. At such time a steamship under steam and sail, which proved to be the screw steamship "American," was seen at the distance of three or four miles from the "Katie," broad on her port bow, and steering about E. or E. by S. The master of the "Katie" not having been able to take observations for several days, and her chronometer having run down, and the said master wishing to exchange longitudes with the "American," caused an ensign to be hoisted, and marked his longitude by account on a board which he exhibited over the port side. The "Katie" was kept full and by, and the "American" approached rapidly, and attempted to pass ahead of the "Katie," and caused immediate danger of collision, and although thereupon the helm of the "Katie" was put hard a-port and her mainsheet let go, the "American" with her stem struck the "Katie" on her port side, almost amidships, cutting her nearly in two, and the "Katie" sank almost immediately, her crew being saved by the steamer.

4. The "American" improperly neglected to keep clear of the "Katie."

5. The "American" improperly attempted to pass ahead of the "Katie."

6. The "American" improperly neglected to ease her engines, and improperly neglected to stop and reverse her engines in due time.

The plaintiffs claim:—

1. That it may be declared that the plaintiffs are entitled to the damage proceeded for.
2. That the bail given by the defendants be condemned in such damage, and in costs.

3. That the accounts and vouchers relating to such damage be referred to the registrar assisted by merchants to report the amount thereof.
4. Such further and other relief as the nature of the case may require.

[Title.]

*Statement of Defence.*

Defence.

The defendants say as follows:—

1. The "American" is a screw steamship, of 1,368 tons register, with engines of 240-horse power nominal, belonging to the port of Liverpool, and at the time of the occurrences hereinafter mentioned was manned by a crew of 40 hands all told, laden with a cargo of general merchandise, and bound from Port-au-Prince in the West Indies to Liverpool.

2. About 8.5 a.m. on the 29th of November, 1874, the "American" was in latitude 46° N., longitude 38° 16′ W., steering E. by S. true magnetic, making under all sail and steam about 12 knots an hour, the wind being about S.W. by S. true magnetic, blowing a strong breeze and the weather hazy, when a vessel, which afterwards proved to be the brigantine "Katie," was observed on the "American's" starboard bow about four miles distant, bearing about S.E. by E. true magnetic, close-hauled to the wind, and steering a course nearly parallel to that of the "American."

3. The "American" kept her course, and when the "Katie" was about three miles distant her ensign was observed by those on board the "American" run up to the main, and she was seen to have altered her course, and to be bearing down towards the "American." The "American's" ensign was afterwards run up, and her master, supposing that the "Katie" wanted to correct her longitude, or to speak the "American," continued on his course, expecting that the "Katie," when she had got sufficiently close to speak or show her black board over her starboard side, would luff to the wind, and pass to windward of the "American."

4. The master of the "American" watched the "Katie" as she continued to approach the "American," and when she had approached as near as he deemed it prudent for her to come, he waved to her to luff, and shortly afterwards, on his observing her to be attempting to cross the bows of the "American," the helm of the latter was immediately put to starboard, and engines stopped and reversed full speed; but notwithstanding, the "American" with her stem came into collision with the port side of the "Katie," a little forward of the main rigging.

5. The "American's" engines were then stopped, and when the crew of the "Katie" had got on board of the "American," the latter's engines were reversed to get her clear of the "Katie," which sank under the "American's" bows.

6. The "Katie" improperly approached too close to the "American."

7. Those on board the "Katie" improperly neglected to luff, and to pass to windward of the "American."

8. Those on board the "Katie" improperly attempted to cross the bows of the "American."

9. Those on board the "Katie" improperly ported her helm before the said collision.

10. Those on board the "Katie" improperly neglected to starboard her helm before the said collision.

[Title.]

*Reply.*

Reply.

The plaintiffs join issue upon the defendants' statement of defence.

## No. 12.—EQUIPMENT OF SHIP.

187 . B. No.

In the High Court of Justice.
Admiralty Division.

Writ issued [ ].

THE "TWO ELLENS."

Between A. B. and C. D. .. .. .. .. Plaintiffs,
and
E. F. .. .. .. .. .. Defendant.

### *Statement of Claim.*

Claim.

1. The said vessel was and is a British Colonial vessel, belonging to the port of Digby, in Nova Scotia, of which no owner or part owner was at the time of the commencement of this action or is domiciled in England or Wales.

2. At the time of the commencement of this action the said vessel was under arrest of this court.

3. About the month of February, 1868, the said vessel was lying in the port of London, in need of repairs, and of being equipped and supplied with certain other necessaries.

4. By the order of Messrs. K. L., who were duly authorized, the plaintiffs equipped and repaired the said vessel as she needed, and provided the vessel with necessaries, and there is now due to the plaintiffs for such necessary repairing and equipping and other necessaries, the sum of 305*l.* 3*s.*, together with interest thereon from the 19th day of February, 1868.

The plaintiffs claim:—

1. Judgment for the said sum of 305*l.* 3*s.*, with such interest thereon as aforesaid until judgment.
2. The condemnation of the ship and the defendant and his bail therein and in the costs of this suit.
3. Such further relief as the nature of the case requires.

[Title.]

### *Statement of Defence.*

Defence.

1. By an instrument of mortgage, in the form and recorded as prescribed by the Merchant Shipping Act, 1854, bearing date the 9th of March, 1867, and executed by C. M., blacksmith, D. F., master mariner, and W. H., farmer, all of Weymouth, in the county of Digby, in Nova Scotia, the registered owners of 64/64ths* parts or shares in the vessel, the said C. M., D. F. and W. H. mortgaged 64/64ths* parts or shares in the vessel, of which the said D. F. was also master, to G. T., of Nova Scotia, in consideration of the sum of 5,000 dollars advanced by him to the said owners, and for the purpose of securing the repayment by them to him of the said sum, with interest thereon.

* *Sic.*

2. By an instrument of transfer, dated the 16th of July, 1868, in the form prescribed by the said act, and executed by G. T., in consideration of the sum of 5,000 dollars to G. T. paid by the defendant G. T. transferred to the defendant the mortgage security.

3. The said sum of 5,000 dollars, with interest thereon, still remains due on the said security.

4. The vessel was not under the arrest of this court at the time of the commencement of this action.

5. The vessel did not need to be equipped or repaired as in the fourth paragraph of the plaintiff's claim mentioned, and she did not at the time of the supply of the articles referred to in the said fourth paragraph as "necessaries" stand in need of such articles. On the contrary, the said vessel could have gone to sea and proceeded on and prosecuted her voyage without such equipments, repairs and articles referred to as

aforesaid, and such equipments, repairs and other articles were done and effected and supplied for the purpose of releasing the said vessel, and not for any other purpose; and the claim of the plaintiffs is not a claim for necessaries within the meaning of the Admiralty Court Act, 1861, s. 5.

6. The alleged necessaries were not supplied on the credit of the said vessel but upon the personal credit of J. B., who was the broker for the vessel, and upon the agreement that the plaintiffs were not to have recourse to the vessel.

7. The defendant did not, nor did G. T., in any way order, authorize or become liable for, and neither of them is in any way liable in respect of the said alleged supplies or any part thereof, and the said vessel was at the time of the commencement of this action and she still is of less value than the amount which, irrespective of the sums referred to in the next article of this answer, is due to the defendant on the said mortgage security.

8. The defendant, in order to save the vessel from being sold by this court at the instance of certain of her mariners having liens on the said vessel for their wages, has been compelled to pay the said wages, and he claims, if necessary, to be entitled to stand in the place of such mariners, or to add the amounts so paid by him for wages to the amount secured by the said mortgage, and to have priority in respect thereof over the claim of the plaintiffs.

[Title.]

*Reply.*

Reply. 1. The plaintiffs admit that 64/64th shares in the said ship, the "Two Ellens," were, on or about the 9th day of March, 1867, mortgaged by the said C. M., D. F. and W. H., all of Weymouth, in the county of Digby, Nova Scotia, to the said G. T.

2. Save as aforementioned all the several averments in the said answer contained are respectively untrue.

3. If there was or is any such instrument of transfer as is mentioned in the second article of the said answer, the same has never been registered according to the provisions of the Merchant Shipping Act, 1854.

4. The said G. T. has never been domiciled in or resided in the United Kingdom, and is now resident in Nova Scotia, and the registered owners of the said vessel in the first paragraph of the said defence mentioned were always and are domiciled in Nova Scotia and resident out of the United Kingdom.

[Title.]

*Rejoinder.*

Rejoinder. The defendant joins issue upon the third and fourth paragraphs of the reply.

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## No. 13.—FALSE IMPRISONMENT.

187 . B. No.

In the High Court of Justice.
Division.

Writ issued 3rd August, 1876.

Between A. B. ..... Plaintiff,
and
E. F. ..... Defendant.

*Statement of Claim.*

Claim. 1. The plaintiff is a journeyman painter. The defendant is a builder, having his building yard, and carrying on business at , and for six

months before and up to the 22nd August, 187 , the plaintiff was in the defendant's employment as a journeyman painter.

2. On the said 22nd August, 187 , the plaintiff came to work as usual in the defendant's yard, at about six o'clock in the morning.

3. A few minutes after the plaintiff had so come to work the defendant's foreman, X. Y., who was then in the yard, called the plaintiff to him, and accused the plaintiff of having on the previous day stolen a quantity of paint, the property of the defendant, from the yard. The plaintiff denied the charge, but X. Y. gave the plaintiff into the custody of a constable, whom he had previously sent for, upon a charge of stealing paint.

4. The defendant was present at the time when the plaintiff was given into custody, and authorized and assented to his being so given into custody; and in any case X. Y., in giving him into custody, was acting within the scope and in the course of his employment as the defendant's foreman, and for the purposes of the defendant's business.

5. The plaintiff upon so being given into custody, was taken by the said constable a considerable distance through various streets on foot, to the police station, and he was there detained in a cell till late in the same afternoon, when he was taken to the police court, and the charge against him was heard before the magistrate then sitting there, and was dismissed.

6. In consequence of being so given into custody, the plaintiff suffered annoyance and disgrace, and loss of time and wages, and loss of credit and reputation, and was thereby unable to obtain any employment or earn any wages for three months.

The plaintiff claims £ damages.

The plaintiff proposes that this action should be tried in Middlesex.

[Title.]

*Statement of Defence.*

Defence.

1. The defendant denies that he was present at the time when the plaintiff was given into custody, or that he in any way authorized or assented to his being given into custody. And the said X. Y., in giving the plaintiff into custody, did not act within the scope or in the course of his employment as the defendant's foreman, or for the purposes of the defendant's business.

2. At some time, about five or six o'clock on the being the evening before the plaintiff was given into custody, a large quantity of paint had been feloniously stolen by some person or persons from a shed upon the defendant's yard and premises.

3. At about 5·30 o'clock on the evening of the the plaintiff, who had left off work about half an hour previously, was seen coming out of the shed when no one else was in it, although his work lay in a distant part of the yard from, and he had no business in or near, the shed. He was then seen to go to the back of a stack of timber in another part of the yard. Shortly afterwards the paint was found to have been stolen, and it was found concealed at the back of the stack of timber behind which the plaintiff had been seen to go.

4. On the following morning, before the plaintiff was given into custody, he was asked by X. Y. what he had been in the shed and behind the stack of timber for, and he denied having been in either place. X. Y. had reasonable and probable cause for suspecting, and did suspect, that the plaintiff was the person who had stolen the paint, and thereupon gave him into custody.

[Title.]

*Reply.*

Reply.

The plaintiff joins issue upon the defendant's statement of defence.

## No. 14.—FORECLOSURE.

In the High Court of Justice. 1876. W. No. 672.
Chancery Division.
[*Name of Judge.*]
Writ issued [ ]
Between R. W. .. .. .. .. Plaintiff,
and
O. S. and J. B. .. .. Defendants.

### *Statement of Claim.*

Claim.

1. By an indenture dated the 25th of March, 1867, made between the defendant O. S. of the one part, and the plaintiff of the other part, the defendant O. S., in consideration of the sum of 10,000*l.* paid to him by the plaintiff, conveyed to the plaintiff and his heirs a farm containing 398 acres, situate in the parish of B., in the county of D., with all the coal mines, seams of coal, and other mines and minerals in and under the same, subject to a proviso for redemption of the same premises on payment by the defendant O. S., his heirs, executors, administrators, or assigns, to the plaintiff, his executors, administrators, or assigns, of the sum of 10,000*l.*, with interest for the same in the meantime at the rate of 4*l.* per cent. per annum, on the 25th day of September then next.

2. By an indenture dated the 1st day of April, 1867, made between the defendant O. S. of the one part, and the defendant J. B. of the other part, the defendant O. S. conveyed to the defendant J. B. and his heirs the hereditaments comprised in the hereinbefore-stated security of the plaintiff, or some parts thereof, subject to the plaintiff's said security, and subject to a proviso for redemption of the same premises on payment by the defendant O. S., his heirs, executors, administrators, or assigns, to the defendant J. B., his executors, administrators, or assigns, of the sum of 15,000*l.*, with interest for the same in the meantime at the rate of 5*l.* per cent. per annum.

3. The whole of the said sum of 10,000*l.*, with an arrear of interest thereon, remains due to the plaintiff on his said security.

The plaintiff claims as follows:—

1. That an account may be taken of what is due to the plaintiff for principal money and interest on his said security, and that the defendants may be decreed to pay to the plaintiff what shall be found due to him on taking such account, together with his costs of this action, by a day to be appointed by the court, the plaintiff being ready and willing, and hereby offering, upon being paid his principal money, interest, and costs, at such appointed time, to convey the said mortgaged premises as the court shall direct.
2. That in default of such payment the defendants may be foreclosed of the equity of redemption in the mortgaged premises.
3. Such further or other relief as the nature of the case may require.

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1876. W. 672.

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]
Between R. W. ..... Plaintiff,
and
O. S. and J. B. ..... Defendants,
(by original action,)
And between the said O. S. ..... Plaintiff,
and
The said R. W. and J. B., and J. W. .... Defendants,
(by counter-claim).

*The Defence and Counter-claim of the above-named O. S.*

Defence.

1. This defendant does not admit that the contents of the indenture of the 25th day of March, 1867, in the plaintiff's statement of complaint mentioned, are correctly stated therein.

2. The indenture of the 1st day of April, 1867, in the statement of claim mentioned, was not a security for the sum of 15,000*l.* and interest at 5*l.* per cent. per annum, but for the sum of 14,000*l.* only, with interest at the rate of 4*l.* 10*s.* per cent. per annum.

3. This defendant submits that under the circumstances in his counter-claim mentioned, the said indentures of the 25th day of March, 1867, and the 1st day of April, 1867, did not create any effectual security upon the mines and minerals in and under the lands in the same indentures comprised, and that the same mines and minerals ought to be treated as excepted out of the said securities.

Counter-claim.

And by way of counter-claim this defendant states as follows:—

1. At the time of the execution of the indenture next hereinafter stated, J. C. A. was seised in fee simple in possession of the lands described in the said indentures, and the mines and minerals in and under the same.

2. By indenture dated the 24th of March, 1860, made between the said J. C. A. of the first part, E. his wife, then E. S., spinster, of the second part, and this defendant and the above-named J. W. of the third part, being a settlement made in contemplation of the marriage, shortly after solemnized, between the said J. C. A. and his said wife, the said J. C. A. granted to this defendant and the said J. W. and their heirs, all the coal mines, beds of coal, and other the mines and minerals under the said lands, with such powers and privileges as in the now-stating indenture mentioned, for the purpose of winning, working, and getting the same mines and minerals, to hold the same premises to this defendant and the said J. W. and their heirs to the use of the said J. C. A., his heirs and assigns, till the solemnization of the said marriage, and after the solemnization thereof to the use of this defendant and the said J. W., their executors and administrators, for the term of 500 years, from the day of the date of the now-stating indenture, upon the trusts therein mentioned, being trusts for the benefit of the said J. C. A., and his wife and the children of their marriage, and from and after the expiration or other determination of the said term of 500 years, and in the meantime subject thereto, to the use of the said J. C. A., his heirs and assigns for ever.

3. By indenture dated the 12th of May, 1860, made between the said J. C. A. of the one part, and W. N. of the other part, the said J. C. A. granted to the said W. N. and his heirs the said lands, except the coal mines, beds of coal, and other mines and minerals thereunder, to hold the same premises unto and to the use of the said W. N., his heirs and assigns for ever, by way of mortgage, for securing the payment to the said W. N., his executors, administrators, or assigns, of the sum of 26,000*l.*, with interest as therein mentioned.

4. On the 14th of January, 1864, the said J. C. A. was adjudicated a bankrupt, and shortly afterwards J. L. was appointed creditors' assignee of his estate.

5. Some time after the said bankruptcy, the said W. N., under a power of sale in his said mortgage deed, contracted with this defendant for the absolute sale to this defendant of the property comprised in his said security for an estate in fee simple in possession, free from incumbrances, for the sum of 26,000*l.*, and the said J. L., as such assignee as aforesaid, agreed to join in the

conveyance to this defendant for the purpose of signifying his assent to such sale.

6. By indenture dated the 1st of September, 1866, made between the said W. N. of the first part, the said J. L. of the second part, the said J. C. A. of the third part, and this defendant of the fourth part, reciting the said agreement for sale, and reciting that the said J. L., being satisfied that the said sum of 26,000*l.* was a proper price, had, with the sanction of the Court of Bankruptcy, agreed to confirm the said sale, it was witnessed that in consideration of the sum of 26,000*l.*, with the privity and approbation of the said J. L., paid by this defendant to the said W. N., he the said W. N. granted, and the said J. C. A. ratified and confirmed to this defendant and his heirs, all the hereditaments comprised in the said security of the 12th day of May, 1860, with their rights, members, and appurtenances, and all the estate, right, title, and interest of them, the said W. N. and J. C. A. therein, to hold the same premises unto and to the use of this defendant, his heirs and assigns for ever.

7. The sale to this defendant was not intended to include anything not included in the security of the 12th of May, 1860, and the said J. L. only concurred therein to signify his approval of the said sale, and did not purport to convey any estate vested in him; and the lastly hereinbefore-stated indenture did not vest in this defendant any estate in the said mines and minerals.

8. The plaintiff and the defendant J. B. respectively had before they advanced to this defendant the moneys lent by them on their securities in the plaintiff's claim mentioned, full notice that the mines and minerals under the said lands did not belong to this defendant. This fact appeared on the abstracts of title delivered to them before the preparation of their said securities. A valuation of the property made by a surveyor was furnished to them respectively on behalf of this defendant before they agreed to advance their money on their said securities; but although the said lands are in a mineral district, the mines and minerals were omitted from such valuation, and they respectively knew at the time of taking their said securities that the same did not include any interest in the mines and minerals.

9. At the time when the securities of the plaintiff and the defendant J. B. were respectively executed, the plaintiff and the defendant J. B. respectively had notice of the said indenture of settlement of the 24th day of March, 1860.

10. At the time when the plaintiff's security was executed, the mines and minerals under the said lands, with such powers and privileges as aforesaid, were vested in this defendant and the said J. W. for the residue of the said term of 500 years, and subject to the said term, the inheritance in the same mines, minerals, powers and privileges was vested in the said J. L. as such assignee as aforesaid.

11. The said security to the plaintiff was by mistake framed so as to purport to include the mines and minerals under the said lands, and by virtue thereof the legal estate in moiety of the said mines and minerals became and now is vested in the plaintiff for the residue of the said term of 500 years.

The defendant O. S. claims as follows:—

1. That it may be declared that neither the plaintiff nor the defendant J. B. has any charge or lien upon that one undivided moiety, which in manner aforesaid became vested in the plaintiff for the residue of the said term of 500 years, of and in the mines and minerals in and under the lands mentioned in the plaintiff's said security.

2. That it may be declared that the said mines and minerals, rights

and privileges which by the said indenture of settlement were vested in the defendant O. S. and the said J. W. for the said term of 500 years, upon trust as therein mentioned, ought to be so conveyed and assured as that the same may become vested in the defendant O. S. and the said J. W. for all the residue of the said term upon the trusts of the said settlement.

3. That the said R. W. and J. W. may be decreed to execute all such assurances as may be necessary for giving effect to the declaration secondly hereinbefore prayed.
4. To have such further or other relief as the nature of the case may require.

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1876. W. 672.

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]

Between R. W. .....Plaintiff,
and
O. S. and J. B. .....Defendants,
(by original action,)
And between the said O. S. .....Plaintiff,
and
The said R. W., and J. B. and J. W. ....Defendants,
(by counter-claim).

## *The Reply of the Plaintiff R. W.*

Reply.

The plaintiff joins issue with the defendants upon their several defences, and in reply to the statements alleged by the defendant O. S., by way of counter-claim, the plaintiff says as follows:

1. The plaintiff does not admit the execution of any such indenture as is stated in the said counter-claim to bear date the 24th of March, 1860.
2. The plaintiff does not admit that the indenture of the 12th of May, 1860, is stated correctly in the statement of claim.
3. When the defendant O. S. in the year 1866 applied to the plaintiff to advance him the sum of 10,000*l.*, he offered to the plaintiff as a security the lands which were afterwards comprised in the indenture of the 25th of March, 1867, including the mines and minerals which he now alleges were not to form part of the security, and the plaintiff agreed to lend the said sum upon the security of the said lands, including such mines and minerals. During the negotiation for the said loan a valuation of the property to be included in the mortgage was delivered to the plaintiff on behalf of the said defendant. Such valuation included the mines and minerals; and the plaintiff consented to make the loan on the faith of such valuation. The plaintiff did not know when he took his security that it did not include any interest in the said mines and minerals; on the contrary, he believed that the entirety of such mines and minerals was to be included therein.
4. The plaintiff does not admit the contents of the indenture of the 1st of September, 1866, to be as alleged, or that it was so framed as not to include the said mines and minerals, or that it was not intended to include anything not included in the security of the 12th of May, 1860, or that J. L. in the counter-claim named only concurred therein to signify his approval of the said sale, and did not purport to convey any estate vested in him.
5. Save so far as the plaintiff's solicitor may have had notice by means of the abstract of title that the mines and minerals under the said lands did not belong to the defendant O. S., the plaintiff

had not any notice thereof, and he does not admit that it appeared from the abstract of title that such was the case. The mines were not omitted from any valuation delivered to the plaintiff as mentioned in the counter-claim.

6. The plaintiff admits that when he took his security he was aware that there was indorsed on the deed by which the said lands were conveyed by J. C. A. in the counter-claim named a notice of a settlement of 24th March, 1860, but he had no further or other notice thereof, and though his solicitor inquired after such settlement none was ever produced.

7. The plaintiff submits that if it shall appear that no further interest in the said mines and minerals was conveyed to him by his said security than one undivided moiety of a term of 500 years therein, as alleged by the said counter-claim, such interest is effectually included in the plaintiff's said security, and that he is entitled to foreclose the same.

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## No. 15.—FRAUD.

187 . B. No.

In the High Court of Justice.
Division.

Writ issued 3rd August, 1876.

Between A. B..... Plaintiff,
and
E. F..... Defendant.

### *Statement of Claim.*

Claim.

1. In or about March, 1875, the defendant caused to be inserted in the Daily Telegraph newspaper an advertisement, in which he offered for sale the lease, fixtures, fittings, goodwill, and stock-in-trade of a baker's shop and business, and described the same as an increasing business, and doing 12 sacks a week. The advertisement directed application for particulars to be made to X. Y.

2. The plaintiff having seen the advertisement applied to X. Y., who placed him in communication with the defendant, and negotiations ensued between the plaintiff and the defendant for the sale to the plaintiff of the defendant's bakery at with the lease, fixtures, fittings, stock-in-trade, and goodwill.

3. In the course of these negotiations the defendant repeatedly stated to the plaintiff that the business was a steadily-increasing business, and that it was a business of more than 12 sacks a week.

4. On the 5th of April, 1875, the plaintiff, believing the said statements of the defendant to be true, agreed to purchase the said premises from the defendant for 500*l.*, and paid to him a deposit of 200*l.* in respect of the purchase.

5. On the 15th April the purchase was completed, an assignment of the lease executed, and the balance of the purchase-money paid. On the same day the plaintiff entered into possession.

6. The plaintiff soon afterwards discovered that at the time of the negotiations for the said purchase by him and of the said agreement, and of the completion thereof, the said business was and had long been a declining business; and at each of those times, and for a long time before, it had never been a business of more than 8 sacks a week. And the said premises were not of the value of 500*l.*, or of any saleable value whatever.

7. The defendant made the false representations hereinbefore mentioned, well knowing them to be false, and fraudulently, with the inten-

tion of inducing the plaintiff to make the said purchase on the faith of them.

The plaintiff claims £ damages.

[Title.]

*Statement of Defence.*

Defence. 1. The defendant says that at the time when he made the representations mentioned in the third paragraph of the statement of claim and throughout the whole of the transactions between the plaintiff and defendant, and down to the completion of the purchase and the relinquishment by the defendant of the said shop and business to the plaintiff, the said business was an increasing business, and was a business of over 12 sacks a week. And the defendant denies the allegations of the sixth paragraph of the statement of claim.

2. The defendant repeatedly during the negotiations told the plaintiff that he must not act upon any statement or representation of his, but must ascertain for himself the extent and value of the said business. And the defendant handed to the plaintiff for this purpose the whole of his books, showing fully and truthfully all the details of the said business, and from which the nature, extent, and value thereof could be fully seen, and those books were examined for that purpose by the plaintiff, and by an accountant on his behalf. And the plaintiff made the purchase in reliance upon his own judgment, and the result of his own inquiries and investigations, and not upon any statement or representation whatever of the defendant.

[Title.]

*Reply.*

Reply. The plaintiff joins issue upon the defendant's statement of defence.

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## No. 16.—GUARANTEE.

187 . B. No.

In the High Court of Justice.
Division.

Writ issued 3rd August, 1876.

Between A. B. and C. D. ..... Plaintiffs,
and
E. F. and G. H. ..... Defendants.

*Statement of Claim.*

Claim. 1. The plaintiffs are brewers, carrying on their business at under the firm of X. Y. & Co.

2. In the month of March, 1872, M. N. was desirous of entering into the employment of the plaintiffs as a traveller and collector, and it was agreed between the plaintiffs and the defendants and M. N., that the plaintiffs should employ M. N. upon the defendant entering into the guarantee hereinafter mentioned.

3. An agreement in writing was accordingly made and entered into, on or about the 30th March, 1872, between the plaintiffs and the defendant, whereby in consideration that the plaintiffs would employ M. N. as their collector, the defendant agreed that he would be answerable for the due accounting by M. N. to the plaintiffs for and the due payment over by him to the plaintiffs of all moneys which he should receive on their behalf as their collector.

4. The plaintiffs employed M. N. as their collector accordingly, and he entered upon the duties of such employment, and continued therein down to the 31st of December, 1873.

5. At various times between the 29th of September and the 25th of December, 1873, M. N. received on behalf of the plaintiffs, and as their collector, sums of money from debtors of the plaintiffs, amounting in the whole to the sum of 950*l.*; and of this amount M. N. neglected to account for or pay over to the plaintiffs sums amounting in the whole to 227*l.*, and appropriated the last-mentioned sums to his own use.

6. The defendant has not paid the last-mentioned sums, or any part thereof, to the plaintiffs.

The plaintiffs claim:—

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## No. 17.—INTEREST SUIT (PROBATE).

187 . . B. No. .

In the High Court of Justice.
Probate Division.

Between A. B.....Plaintiff,
and
C. D.....Defendant.

### *Statement of Claim.*

Claim.

1. M. N., late of No. High Street, Putney, in the county of Surrey, grocer, deceased, died on or about the day of , at No, 1, High Street, Putney, aforesaid, a widower, without child, parent, brother or sister, uncle or aunt, nephew or niece.

2. The plaintiff is a cousin-german, and one of the next of kin of the deceased.

The plaintiff claims:—

That the court decree to him a grant of letters of administration of the personal estate and effects of the said deceased as his lawful cousin-german, and one of his next of kin.

[Title.]

### *Defence.*

Defence.

1. The defendant admits that M. N. died a widower, without child, parent, brother or sister, uncle or aunt, or niece, but he denies that he died without nephew.

2. The deceased had a brother named G. B., who died in his lifetime.

3. G. B. was married to E. H. in the parish church of in the county of on the day of and had issue of such marriage the defendant, who was born in the month of and is the nephew and next of kin of the deceased.

The defendant therefore claims:—

That the court pronounce that he is the nephew and next of kin of the deceased, and as such entitled to a grant of letters of administration of the personal estate and effects of the deceased.

[Title.]

### *Reply.*

Reply.

1. The plaintiff denies that G. B. was married to E. H.

2. He also denies that the defendant is the issue of such marriage.

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## No. 18.—LANDLORD AND TENANT.

187 . B. No. .

In the High Court of Justice.
Division.
Writ issued 3rd August, 1876.
Between A. B.....Plaintiff,
and
C. D.....Defendant.

### *Statement of Claim.*

Claim.

1. On the day of the plaintiff, by deed, let to the defendant a house and premises, No. 52, Street, in the city of London, for a term of 21 years from the day of , at the yearly rent of 120*l.*, payable quarterly.

2. By the said deed the defendant covenanted to keep the said house and premises in good and tenantable repair.

3. The said deed also contained a clause of re-entry, entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved, whether demanded or not, should be in arrear for 21 days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4. On the 28th June, 187 , a quarter's rent became due, and on the 29th of September, 187 , another quarter's rent became due; on the 21st of October, 187 , both had been in arrear for 21 days, and both are still due.

5. On the same 21st October, 187 , the house and premises were not and are not now in good or tenantable repair, and it would require the expenditure of a large sum of money to reinstate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value.

The plaintiff claims:—

1. Possession of the said house and premises.
2. £ for arrears of rent.
3. £ damages for the defendant's breach of his covenant to repair.
4. £ for the occupation of the house and premises from the 29th of September, 187 , to the day of recovering possession.

The plaintiff proposes that this action should be tried in London.

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## No. 19.—NECESSARIES FOR SHIP.

187 . B. No.

In the High Court of Justice.
Admiralty Division.
Writ issued [ ]
THE "ENTERPRISE."
Between A. B. and C. D. ..... Plaintiffs,
and
E. F. and G. H. ..... Defendants.

### *Statement of Claim.*

Claim.

1. The plaintiffs were at the time hereinafter stated, and are engineers and ironfounders, carrying on business at Liverpool, in the county of Lancaster.

2. In the month of January, 1872, whilst the above-named steamship "Enterprise," belonging to the port of London, was in the port of Liverpool, the plaintiffs, having received orders from the master in that

behalf, executed certain necessary work to her, and supplied her with certain necessary stores and materials, and caused her to be supplied upon their credit with certain necessary work, labour, materials, and necessaries, and thereby supplied the said ship with necessaries within the meaning of the fifth section of the Admiralty Court Act, 1861.

3. There is due to the plaintiffs in respect of such supply of necessaries to the said ship the sum of 577*l.* 2*s.* 6*d.*, and the plaintiffs cannot obtain payment thereof without the assistance of the court.

The plaintiffs claim:—

1. Judgment pronouncing for the claim of the plaintiffs.
2. The condemnation of the defendants and their bail therein, with costs.
3. A reference, if necessary, of the claim of the plaintiffs to the registrar, assisted by assessors, to report the amount thereof.
4. Such further relief as the nature of the case requires.

[Title.]

*Defence.*

Defence.

1. The defendants deny the allegations contained in the third paragraph of the statement of claim.

2. The defendants admit that the plaintiffs executed certain work to the said ship, and supplied her with certain materials, but they say, that a portion of the work so executed was executed badly and insufficiently, and of the materials so supplied, some were bad and insufficient, and a portion of the work in the claim mentioned was done in and about altering and endeavouring to make good such bad and insufficient work and materials. The defendant has paid in respect of the work and materials in the claim mentioned the sum of 356*l.* 17*s.* 9*d.*, and the said sum is sufficient to satisfy the claims of the plaintiffs.

3. The defendants deny the allegations contained in the second paragraph of the claim so far as they relate to any claim beyond the said sum of 356*l.* 17*s.* 9*d.*, and say that if the plaintiffs did execute any work, or did supply any materials other than the work and materials mentioned in the second paragraph of this defence, such work was not necessary work, and such materials were not necessary materials, within the meaning of the fifth section of the Admiralty Court Act, 1861, and were not supplied in such circumstances as to render the defendants liable to pay for the same.

[Title.]

*Reply.*

Reply.

1. The defendants join issue upon the statement of defence.

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## No. 20.—NEGLIGENCE.

In the High Court of Justice. 187 . B. No.
Division. .....

Writ issued 3rd August, 1876.

Between A. B..... Plaintiff,
and
E. F..... Defendant.

*Statement of Claim.*

The Claim.

1. The plaintiff is a shoemaker, carrying on business at . The defendant is a soap and candle manufacturer, of .

2. On the 23rd May, 1875, the plaintiff was walking eastward along the south side of Fleet Street, in the city of London, at about three o'clock

in the afternoon. He was obliged to cross Street, which is a street running into Fleet Street at right angles on the south side. While he was crossing this street, and just before he could reach the foot pavement on the further side thereof, a two-horse van of the defendant's, under the charge and control of the defendant's servants, was negligently, suddenly, and without any warning, turned at a rapid and dangerous pace out of Fleet Street into Street. The pole of the van struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims £ damages.

[Title.]

*Statement of Defence.*

Defence.

1. The defendant denies that the van was the defendant's van, or that it was under the charge or control of the defendant's servant. The van belonged to Mr. John Smith, of , a carman and contractor employed by the defendant to carry and deliver goods for him; and the persons under whose charge and control the said van was, were the servants of the said Mr. John Smith.

2. The defendant does not admit that the van was turned out of Fleet Street, either negligently, suddenly, or without warning, or at a rapid or dangerous pace.

3. The defendant says, that the plaintiff might, and could by the exercise of reasonable care and diligence, have seen the van approaching him, and avoided any collision with it.

4. The defendant does not admit the statements of the third paragraph of the statement of claim.

[Title.]

*Reply.*

Reply.

The plaintiff joins issue upon the defendant's statement of defence.

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## No. 21.—POSSESSION OF SHIP.

187 . B. No.

In the High Court of Justice.
Admiralty Division.

Writ issued [ ].

THE "LADY OF THE LAKE."

Between A. B..... Plaintiff,
and
E. F..... Defendant.

*Statement of Claim.*

Claim.

1. On or about the 15th of July, 1868, an agreement was entered into between the plaintiff and J. D., who was then the sole owner of the above-named barque "Lady of the Lake," whereby J. D. agreed to sell, and the plaintiff agreed to purchase, 32-64th parts or shares of the vessel for the sum of 500*l.*, payment 300*l.* in cash, and the remainder by purchaser's acceptances at three and six months date, and it was thereby agreed that the plaintiff was to be commander of the vessel.

2. The plaintiff accordingly paid to J. D. the sum of 300*l.*, and gave him his (the plaintiff's) acceptances at three and six months date for the residue of the said purchase-money, and J. D. by bill of sale transferred 32-64th parts or shares in the vessel to the plaintiff, which bill of sale was duly registered on the 18th of July, 1868; the plaintiff has since been and still is the registered owner of such 32-64th shares.

3. The vessel then sailed under the plaintiff's command on a voyage from Sunderland to the Brazils and other ports, and then on a homeward voyage to Liverpool, where she arrived on the 18th of June, 1869, and having there discharged her homeward cargo she sailed thence under the plaintiff's command with a cargo to the Tyne, and thence to Sunderland, at which port she arrived on the 9th of August, 1869.

4. The plaintiff then made several ineffectual applications to J. D. with a view to obtaining another charter for the said vessel, and after she had been lying idle for a considerable time, the plaintiff, on or about the 16th of September, 1869, obtained an advantageous charter for her to proceed to Barcelona with a cargo of coals, and with a view to enabling her to execute such charter the plaintiff paid the dock dues, and moved the vessel into a slipway in order that her bottom might be cleaned, but on or about the 17th of September, whilst the vessel was on the shore adjoining the slipway, the defendant, to whom the said J. D. had in the meantime transferred his 32-64th parts, forcibly took the vessel out of the possession of the plaintiff, and refused and still refuses to allow the plaintiff to take the vessel on her said voyage to Barcelona, and by reason thereof heavy loss is being occasioned to the plaintiff.

The plaintiff claims:—

1. Judgment giving possession of the vessel "Lady of the Lake" to the plaintiff.
2. The condemnation of the defendant in costs of suit, and in all losses and damages occasioned by the defendant to the plaintiff.
3. Such further relief as the nature of the case requires.

[Title.]

*Defence.*

Defence.

1. The defendants say that the acceptances in the second paragraph of the claim mentioned were respectively dishonoured by the plaintiff, and have never yet been paid by him.

2. It was agreed between the plaintiff and J. D. that J. D. should act, and he has since always acted, as ship's husband of the "Lady of the Lake."

3. On the 31st of August, 1869, J. D. sold to the defendant, for the sum of 400*l.*, and by bill of sale duly executed, transferred to him his 32-64th shares, and the bill of sale was duly registered on the 14th of September following.

4. After the "Lady of the Lake" had arrived at Sunderland, and after the defendant had purchased from J. D. his 32-64th shares of the "Lady of the Lake," the defendant placed the vessel in the custody and possession of a shipkeeper. The plaintiff, however, unlawfully removed her from such possession, and thereupon the defendant had the vessel taken into the South Dock of the harbour at Sunderland, with orders that she should be kept there. What the defendant did, as in this article mentioned, he did with the consent and full approval of J. D.

5. At the time of the sale of the "Lady of the Lake" by J. D. to the defendant as aforementioned, there was and there still is due from the plaintiff, as part owner of the "Lady of the Lake," to J. D., as part owner and ship's husband, a sum of money exceeding 300*l.* in respect of the vessel and her voyages over and above the amount of the unpaid acceptances.

6. Save as herein appears, the averments in the fourth paragraph of the claim contained are untrue, and if the charter-party mentioned in

that paragraph was obtained by the plaintiff as alleged, which the defendant does not admit, it was obtained by him without the authority, consent, or knowledge of J. D. or the defendant.

7. Before the defendant took possession of the vessel as aforementioned, the plaintiff ceased to be master of her, with the consent of J. D. or the defendant.

8. J. D. has instituted an action against the said vessel in in order to have the accounts taken between him and the plaintiff, and to enforce payment of the money due from the plaintiff to him.

[Title.]

*Reply.*

Reply.

1. The plaintiff says in reply to the first paragraph of the defence, that the bills therein mentioned were dishonoured by the plaintiff because J. D. was indebted to the plaintiff in a large amount for his wages as master, and for his share of the earnings of the "Lady of the Lake," and refused payment thereof.

2. J. D. did not place the vessel in the exclusive custody or possession of a shipkeeper, as in the fifth paragraph of the defence stated or implied. On the contrary, the vessel continued in the custody and possession of the plaintiff, who still holds her register. A man was sent on board the vessel by J. D. to look after J. D.'s share in the said vessel while she was in dock, but he did not dispossess the said plaintiff or take exclusive possession of the vessel, and the plaintiff was not dispossessed of the vessel until on or about the 17th September last.

3. Except as hereinbefore appears, the plaintiff joins issue upon the defendant's statement of defence.

[Title.]

*Rejoinder.*

Rejoinder.

The defendant joins issue upon the first and second paragraphs of the reply.

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## No. 22.—PROMISSORY NOTE.

187. B. No.

In the High Court of Justice.
Division.

Writ issued 3rd August, 1876.

Between A. B. ..... Plaintiff,
and
E. F. ..... Defendant.

*Statement of Claim.*

Claim.

1. The defendant on the day of made his promissory note, whereby he promised to pay to the plaintiff or his order £ three months after date.

2. The note became due on the day of 1874, and the defendant has not paid it.

The plaintiff claims :—

The amount of the note and interest thereon to judgment.

The plaintiff proposes that this action should be tried in the county of .

[Title.]

*Statement of Defence.*

Defence. 1. The defendant made the note sued upon under the following circumstances:—The plaintiff and defendant had for some years been in partnership as coal merchants, and it had been agreed between them that they should dissolve partnership, that the plaintiff should retire from the business, that the defendant should take over the whole of the partnership assets and liabilities, and should pay the plaintiff the value of his share in the assets after deducting the liabilities.

2. The plaintiff thereupon undertook to examine the partnership books, and inquire into the state of the partnership assets and liabilities; and he did accordingly examine the books and make the said inquiries, and he thereupon represented to the defendant that the assets of the firm exceeded 10,000*l.*, and that the liabilities of the firm were under 3,000*l.*, whereas the fact was that the assets of the firm were less than 5,000*l.*, and the liabilities of the firm largely exceeded the assets.

3. The misrepresentations mentioned in the last paragraph induced the defendant to make the note now sued on, and there never was any other consideration for the making of the note.

[Title.]

*Reply.*

Reply. The plaintiff joins issue on the defence.

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## No. 23.—PROBATE OF WILL IN SOLEMN FORM.

187 . B. No.

In the High Court of Justice.
Probate Division.

Writ issued [ ].

Between A. B. ..... ... Plaintiff,
and
E. F. ..... Defendant.

*Statement of Claim.*

Claim. 1. C. D., late of Bicester, in the county of Oxford, gentleman, deceased, who died on the 20th January, 1875, at Bicester, being of the age of 21 years, made his last will, with one codicil thereto, the said will bearing date the first day of October, 1874, and the said codicil the first of January 1875, and in the said will appointed the plaintiff sole executor thereof.

2. The said will and codicil were signed by the deceased [*or*, by X. Y., in the presence and by the directions of the deceased, or signed by the deceased, who acknowledged his signature, *or as the case may be*] in the presence of two witnesses present at the same time, the said will in the presence of H. P. and J. R., and the said codicil in the presence of J. D. and J. E., and who subscribed the same in the presence of the said deceased.

3. The deceased was at the time of the execution of the said will and codicil respectively of sound mind, memory and understanding.

The plaintiff claims:—

That the court shall decree probate of the said will and codicil in solemn form of law.

[Title.]

*Statement of Defence.*

Defence. The defendant says as follows:—

1. The said will and codicil of the said deceased were not duly executed according to the provisions of the statute 1 Vict. c. 26.

2. The deceased, at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory and understanding.

3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him, whose names are at present unknown to the defendant].

4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud, so far as is within the defendant's present knowledge, being [*state the nature of the fraud*].

5. The said deceased, at the time of the execution of the said will and codicil, did not know and approve of the contents thereof or of the contents of the residuary clause in the said will [*as the case may be*].

6. The deceased made his true last will, dated the 1st day of January, 1873, and in the said will appointed the defendant sole executor thereof. [*Propound this will as in paragraphs 2 and 3 of claim.*]

The defendant claims:—

1. That the court will pronounce against the said will and codicil propounded by the plaintiff.
2. That the court will decree probate of the said will of the said deceased, dated the 1st of January, 1873, in solemn form of law.

[Title.]

*Reply.*

Reply. 1. The plaintiff joins issue upon the statement of defence of the defendant, as contained in the first, second, third, fourth, and fifth paragraphs thereof.

2. The plaintiff says that the said will of the said deceased, dated the 1st of January, 1873, was duly revoked by the will of the said 1st October, 1873, propounded by the plaintiff in his statement of claim.

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## No. 24.—RECOVERY OF LAND—LANDLORD AND TENANT.

In the High Court of Justice. 187 . B. No.
Common Pleas Division.

Writ issued 3rd August, 1876.

Between A. B. ..... Plaintiff,
and
C. D. ..... Defendant.

*Statement of Claim.*

Claim. 1. On the day of , the plaintiff let to the defendant a house, No. 52, street, in the city of London, as tenant from year to year, at the yearly rent of 120*l.*, payable quarterly, the tenancy to commence on the day of .

2. The defendant took possession of the house and continued tenant thereof until the day of last, when the tenancy determined by a notice duly given.

3. The defendant has disregarded the notice and still retains possession of the house.

The plaintiff claims:—
1. Possession of the house.
2. £ for mesne profits from the day of .
The plaintiff proposes that this action should be tried in London.

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In the High Court of Justice. 187 . No.
Common Pleas Division.

Between A. B. ..... Plaintiff,
and
C. D. ..... Defendant,
(by original action,)
And between C. D. ..... Plaintiff,
and
A. B. ..... Defendant,
(by counter-claim.)

The defence and counter-claim of the above-named C. D. Defence.

1. Before the determination of the tenancy mentioned in the statement of claim, the plaintiff A. B., by writing dated the day of , and signed by him, agreed to grant to the defendant C. D. a lease of the house mentioned in the statement of claim, at the yearly rent of 150*l.*, for the term of 21 years, commencing from the day of , when the defendant C. D.'s tenancy from year to year determined, and the defendant has since that date been and still is in possession of the house under the said agreement.

2. By way of counter-claim the defendant claims to have the agreement specifically performed and to have a lease granted to him accordingly, and for the purpose aforesaid, to have this action transferred to the Chancery Division. Counter-claim.

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In the High Court of Justice. 187 . No.
Chancery Division.
(Transferred by order dated day of .)

Between A. B. ..... Plaintiff,
and
C. D. ..... Defendant,
(by original action,)
And between C. D. ..... Plaintiff,
and
A. B. ..... Defendant,
(by counter-claim.)

The reply of the plaintiff A. B. Reply.

The plaintiff A. B. admits the agreement stated in the defendant C. D.'s statement of defence, but he refuses to grant to the defendant a lease, saying that such agreement provided that the lease should contain a covenant by the defendant to keep the house in good repair and a power of re-entry by the plaintiff upon breach of such covenant, and the plaintiff says that the defendant has not kept the house in good repair, and the same is now in a dilapidated condition.

[Title.]

*Joinder of Issue.*

The defendant C. D. joins issue upon the plaintiff A. B.'s statement in reply.

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## No. 25.—RECOVERY OF LAND.

187 . B. No.

In the High Court of Justice.
Common Pleas Division.
Writ issued 3rd August, 1876.

Between A. B. and C. D. ..... Plaintiffs,
and
E. F. ..... Defendant.

### *Statement of Claim.*

Claim.

1. K. L., late of Sevenoaks, in the county of Kent, duly executed his last will, dated the 4th day of April, 1870, and thereby devised his lands at or near Sevenoaks, and all other his lands in the county of Kent, unto and to the use of the plaintiffs and their heirs, upon the trusts therein mentioned, for the benefit of his daughters Margaret and Martha, and appointed the plaintiffs executors thereof.

2. K. L. died on the 3rd day of January, 1875, and his said will was proved by the plaintiffs in the Court of Probate on or about the 4th day of February, 1875.

3. K. L. was at the time of his death seised in fee of a house at Sevenoaks, and two farms near there called respectively , the home farm containing 276 acres, and the Longton farm containing 700 acres, both in the county of Kent.

4. The defendant, soon after the death of K. L., entered into possession of the house and two farms, and has refused to give them up to the plaintiff.

The plaintiffs claim:—

1. Possession of the house and two farms.
2. £ for mesne profits of the premises from the death of K. L. till such possession shall be given.

The plaintiff proposes that this action should be tried in the county of Kent.

[Title.]

### *Statement of Defence.*

Defence.

1. The defendant is the eldest son of I. L. deceased, who was the eldest son of K. L., in the statement of claim named.

2. By articles bearing date the 31st day of May, 1827, and made previous to the marriage of K. L. with Martha his intended wife, K. L., in consideration of such intended marriage, agreed to settle the house and two farms in the statement of claim mentioned (and of which he was then seised in fee) to the use of himself for his life, with remainder to the use of his intended wife for her life, and after the survivor's decease, to the use of the heirs of the body of the said K. L. on his wife begotten, with other remainders over.

3. The marriage soon after took effect, K. L., by deeds of lease and release, bearing date respectively the 4th and 5th of April, 1828, after reciting the articles in alleged performance of them, conveyed the house and two farms to the use of himself for his life, with remainder to the use of his wife for her life, and after the decease of the survivor of them, to the use of the heirs of the body of K. L. on the said Martha to be begotten, with other remainders over.

4. There was issue of the marriage an only son Thomas L and two daughters. After the death of Thomas L , which took place in February, 1864, K. L., on the 3rd May, 1864, executed a disentailing assurance, which was duly enrolled, and thereby conveyed the house and two farms to the use of himself in fee.

[Title.]

*Reply.*

The plaintiffs join issue upon the defendant's statement of defence. Reply.

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## No. 26.—Salvage.

In the High Court of Justice.
Admiralty Division.

Writ issued [ ].

THE "CAMPANIL."

Between A. B. and C. D. ..... Plaintiffs,
and
E. F. and G. H. ..... Defendants.

*Statement of Claim.*

1. The "Brazilian" is a screw steamer belonging to the port of Newcastle, of the burthen of 1,359 tons gross registered tonnage, and propelled by engines of 130 horse-power, and at the time of the rendering of the salvage services hereinafter mentioned she was navigated by her master and a crew of twenty-four hands. She left the port of Newcastle on the 27th of November, 1873, on a voyage to Genoa, and thence by way of Palmaras and Aguilas to the Tyne; and about 10 a.m. on the 26th of December, 1873, in the course of her homeward voyage, with a cargo of merchandise, she was off the coast of Portugal, the Island of Ons bearing about S.E. by E., when those on board her sighted a disabled steamer about four points on their starboard bow, inshore, flying signals of distress. A strong gale was blowing at the time, and there was a very heavy sea running. Claim.

2. The "Brazilian" at once made towards the disabled steamer, which proved to be the "Campanil," the vessel proceeded against in this action. She was heavily laden with a cargo of iron ore. The "Brazilian," as she approached the "Campanil," signalled to her, and the "Campanil" answered by signal that her engines had broken down. By this time the "Campanil" was heading in shore, rolling heavily, and shipping a large quantity of water. The "Brazilian" came under the lee of the "Campanil," and asked if she wanted assistance. Her master replied that he wanted to be towed to Vigo, as his vessel had lost her screw. The master of the "Brazilian" then asked those on board the "Campanil" to send him a hawser, and for a long time those on board the "Brazilian" made attempts to get a hawser from the Campanil," and exposed themselves and their vessel to great danger in doing so. The wind and sea rendering it impossible to get the hawser whilst the "Brazilian" was to leeward of the "Campanil," the "Brazilian" went to windward and attempted to float lines, by means of life-buoys, to the "Campanil." During all this time, the "Campanil" was quite unmanageable, and yawed about, and there was very great difficulty in manœuvring the "Brazilian" so as to retain command over her and keep her near the "Campanil." It was necessary to keep constantly altering the engines of the "Brazilian," setting them on ahead and reversing them quickly, and in consequence the engines laboured heavily and were exposed to great danger of being strained.

3. Whilst the "Brazilian" was endeavouring to float lines to the "Campanil," the "Campanil" made a sudden lurch and struck the "Brazilian" on her port quarter, knocking in her port bulwark and rail, and causing other damage to the vessel. After many unsuccessful efforts by those on board the "Brazilian," and after they had lost two life-buoys and a quantity of rope, a hawser from the "Campanil" was

at length made fast on board the "Brazilian," and the "Brazilian," with the "Campanil" in tow, steamed easy ahead. A second hawser was then got out, and made fast with coir springs, and the "Brazilian" then commenced to tow full speed ahead, each hawser having a full scope of 90 fathoms.

4. The "Brazilian" made towards Vigo, which was about 35 miles distant; the vessels made about two knots an hour, the "Brazilian" keeping her engines going at full speed. The "Brazilian" laboured very heavily, and both vessels shipped large quantities of water.

5. About noon, one of the tow-ropes broke, and both vessels were in danger of being driven ashore, broken water and rocks appearing to leeward, distant about two miles. After great difficulty, the broken hawser was made fast again with a heavy spring of a number of parts of rope, and the "Brazilian" towed ahead under the lee of Ons Island.

6. Shortly afterwards, the weather moderated and the sea went down a little, and the "Brazilian" was able to make more way, and about 7 p.m. the same day she towed the "Campanil" into Vigo harbour in safety.

7. The "Brazilian" was compelled to remain in harbour the next day, to pay port charges and clear at the Custom House.

8. The coast off which the aforesaid services were rendered is rocky and exceedingly dangerous, and strong currents set along it; and, but for the services rendered by the "Brazilian," the "Campanil" must have gone ashore and been wholly lost, together with her cargo, and in all probability her master and crew would have been drowned. No other steamer was in sight, and there was not any prospect of any other efficient assistance.

9. In rendering the said services the "Brazilian" and those on board her were exposed to great danger. Owing to the heavy sea, and the necessity of towing with a long scope of hawser, there was great danger of fouling the screw of the "Brazilian," and it required constant vigilance on the part of the master and crew to prevent serious accident. The master and crew of the "Brazilian" underwent much extra fatigue and exertion.

10. The damage sustained by the "Brazilian," in rendering the said services, amounts to the sum of 150*l.*, and the value of the extra quantity of coal consumed in consequence of the said services is estimated at 16*l.*, and 4*l.* 1*s.* 5*d.* was paid by the owners of the "Brazilian" for harbour dues and other charges at Vigo.

11. The value of the "Campanil," her cargo and freight at the time of the salage services, were as follows, that is to say: The "Campanil" was of the value of 13,000*l.*, her cargo was of the value of 300*l.*, and the gross amount of freight payable upon delivery of the cargo laden on board her at Barrow-in-Furness was 675*l.*

12. The value of the "Brazilian," her freight and cargo, was about 25,050*l.*

The plaintiffs claim:—

1. Such an amount of salvage as to the court may seem just.
2. That the defendants and their bail be condemned in costs.
3. Such further or other relief as the nature of the case may require.

[Title.]

*Statement of Defence.*

Defence.

1. The defendants say that upon the 22nd of December, 1873, the iron screw steamship "Campanil," of the burden of 660 tons register gross, propelled by engines of 70-horse power, navigated by David Boughton, her master, and a crew of 16 hands, left Porman, bound to Barrow-in-Furness, laden with a cargo of iron ore.

2. At about 8 a.m. on the 26th of December, whilst the "Campanil" was prosecuting her voyage, the shaft of her propeller broke outside the

stern tube, and she lost her propeller. The "Campanil" was then brought to the wind, which was south by east, blowing fresh, and she proceeded under sail for Vigo, and continued to do so till about 9.30 a.m., when two steamships which had been for some time in sight, and coming to the northward, approached the "Campanil." The ensign of the "Campanil" was hoisted, union up, as a signal to one of such steamships, which afterwards came to the "Campanil," and proved to be the "Brazilian," whose owners, master and crew, are the plaintiffs.

3. The "Brazilian" then signalled the "Campanil" and inquired what was the matter, and was signalled in reply that the "Campanil" had lost her propeller, and required to be towed to Vigo, upon which the "Brazilian" signalled for the rope of the "Campanil," in order to take her in tow. After this the "Brazilian" steamed round the "Campanil" and up on to her starboard bow, and in so doing the "Brazilian" came with her port quarter into the starboard bow of the "Campanil" and did her considerable damage.

4. The "Brazilian" then threw a heaving line on board the "Campanil," and one of the "Campanil's" hawsers was attached to the line and hauled on board the "Brazilian," which passed one of her hawsers to the "Campanil" by means of life buoys, and when such hawsers had been secured between the two vessels the "Brazilian" commenced to tow the "Campanil" for Vigo, it being at this time about 10.30 a.m., and Ons Island then bearing about south-east by south, and distant about 15 miles.

5. The "Brazilian" proceeded with the "Campanil" in tow, but owing to the two vessels being laden, and to the small power of the "Brazilian," she was only able to make very slow progress with the "Campanil," and it was not until 6.30 p.m. of the said day that the "Brazilian" arrived at Vigo with the "Campanil," which then came to anchor off the town there.

6. The defendants on the day of tendered to the plaintiffs, and have paid into court, the sum of 350*l.* for the services so as aforesaid rendered to the "Campanil" and her said cargo and freight, and offered to pay the costs, and submit that the same is ample and sufficient.

[Title.]

*Reply.*

Reply. 1. The plaintiffs admit the first and second articles of the answer, and they admit that the "Brazilian" came into collision with the "Campanil," and caused slight damage to the "Campanil," but save as aforesaid they join issue upon the statement of defence.

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## No. 27.—TRESPASS TO LAND.

187 . No.

In the High Court of Justice.
Division.
Writ issued 3rd August, 1876.

Between A. B. ..... Plaintiff,
and
E. F. ..... Defendant.

*Statement of Claim.*

Claim. 1. The plaintiff was on the 5th of March, 1876, and still is the owner and occupier of a farm called Highfield Farm, in the parish of and county of .

2. A private road, known as Highfield Lane, runs through a portion of the plaintiff's farm. It is bounded upon both sides by fields of the plaintiff's, and is separated therefrom by a hedge and ditch.

3. For a long time prior to the 5th March, 1876, the defendant had wrongfully claimed to use the said road for his horses and carriages, on the alleged ground that the same was a public highway, and the plaintiff had frequently warned him that the same was not a public highway, but the plaintiff's private road, and that the defendant must not so use it.

4. On the 5th of March, 1876, the defendant came with a cart and horse, and a large number of servants and workmen, and forcibly used the road, and broke down and removed a gate which the plaintiff had caused to be placed across the same.

5. The defendant and his servants and workmen on the same occasion pulled down and damaged the plaintiff's hedge and ditch upon each side of the road, and went upon the plaintiff's field beyond the hedge and ditch, and injured the crops there growing, and dug up and injured the soil of the road; and in any case the acts mentioned in this paragraph were wholly unnecessary for the assertion of the defendant's alleged right to use, or the user of the said road as a highway.

The plaintiff claims:—

1. Damages for the wrongs complained of.
2. An injunction restraining the defendant from any repetition of any of the acts complained of.
3. Such further relief as the nature of the case may require.

[Title.]

*Statement of Defence.*

Defence.

1. The defendant says that the road was and is a public highway for horses and carriages; and a few days before the 5th March, 1876, the plaintiff wrongfully erected the gate across the road for the purpose of obstructing and preventing, and it did obstruct and prevent, the use of the road as a highway. And the defendant, on the said 5th March, 1876, caused the said gate to be removed, in order to enable him lawfully to use the road by his horses and carriages as a highway.

2. The defendant denies the allegations of the fifth paragraph of the statement of claim, and says that neither he, nor any of his workmen or servants, did any act, or used any violence other than was necessary, to enable the plaintiff lawfully to use the highway.

[Title.]

*Reply.*

Reply.

The plaintiff joins issue upon the defendant's statement of defence.

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## No. 28.

*Form of Demurrer.*

In the High Court of Justice.
Division.
A. B. *v.* C. D.

The defendant [plaintiff] demurs to the [plaintiff's statement of complaint *or* defendant's statement of defence, or of set-off, *or* of counterclaim], [*or* to so much of the plaintiff's statement of complaint as claims . . . . *or* as alleges as a breach of contract the matters mentioned in paragraph 17, *or as the case may be*], and says that the same is bad in

law, on the ground that [*here state a ground of demurrer*], and on other grounds, sufficient in law to sustain this demurrer.

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No. 29.

*Memorandum of Entry of Demurrer for Argument.*

1874. B. No. .

In the High Court of Justice.
Division.

A. B. *v.* C. D.

Enter for the argument the demurrer of to .

X. Y.,
Solicitor for the plaintiff [*or, &c.*].

# APPENDIX (D).

FORMS OF JUDGMENT.

1. *Default of Appearance and Defence in Case of Liquidated Demand.*

1876. B. No. .

In the High Court of Justice.
Division.
Between A. B..... Plaintiff,
and
C. D. and E. F. .... Defendants.

30th November, 1876.

The defendants [*or* the defendant C. D.] not having appeared to the writ of summons herein [*or not having delivered any statement of defence*], it is this day adjudged that the plaintiff recover against the said defendant £ and costs, to be taxed.

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2. *Judgment in Default of Appearance in Action for Recovery of Land.*

[Title, &c.]

30th November, 1876.

No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the said writ mentioned.

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3. *Judgment in Default of Appearance and Defence after Assessment of Damages.*

1876. B. No. .

In the High Court of Justice.
Division.
Between A. B. and C. D. ..... Plaintiffs,
and
E. F. and G. H. ..... Defendants.

30th November, 1876.

The defendants not having appeared to the writ of summons herein [*or not having delivered a statement of defence*], and a writ of inquiry, dated , 1876, having been issued, directed to the sheriff of , to assess the damages which the plaintiff was entitled to recover, and the said sheriff having, by his return dated the , 1876, returned that the said damages have been assessed at £ , it is adjudged that the plaintiff recover £ and costs, to be taxed.

### 4. *Judgment at Trial by Judge without a Jury.*

[*Year, letter, and number.*]

Division.

day of 18 .

[*If in Chancery Division, name of Judge.*]

Between A. B. ..... Plaintiff,

and

C. D., E. F., and G. H. ..... Defendants.

This action coming on for trial [the day of and] this day, before in the presence of counsel for the plaintiff and the defendants [*or, if some of the defendants do not appear*, for the plaintiff and the defendant C. D., no one appearing for the defendants E. F. and G. H., although they were duly served with notice of trial, as by the affidavit of filed the day of appears], upon hearing the probate of the will of , the answers of the defendants C. D., E. F., and G. H., to interrogatories, the admission in writing, dated , and signed by [Mr. the solicitor for] the plaintiff A. B., and by [Mr. the solicitor for] the defendant C. D., the affidavit of filed the day of , the affidavit of filed the day of , the evidence of taken on their oral examination at the trial, and an exhibit marked X., being an indenture dated, &c., and made between [parties], and what was alleged by counsel on both sides: This court doth declare, &c.

And this court doth order and adjudge, &c.

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### 5. *Judgment after Trial by a Jury.*

[Title, &c.]

15th November, 1876.

The action having on the 12th and 13th November, 1876, been tried before the Honorable Mr. Justice and a special jury of the county of , and the jury having found [*state findings as in officer's certificate*], and the said Mr. Justice having ordered that judgment be entered for the plaintiff for £ and costs of suit [*or as the case may be*]: Therefore it is adjudged that the plaintiff recover against the defendant £ and £ for his costs of suit [*or* that the plaintiff recover nothing against the defendant, and that the defendant recover against the plaintiff £ for his costs of defence, *or as the case may be*].

---

### 6. *Judgment after Trial before Referee.*

[Title, &c.]

30th November, 1876.

The action having on the 27th November, 1876, been tried before X. Y., Esq., an official [*or* special referee; and the said X. Y. having found [*state substance of referee's certificate*], it is this day adjudged that

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### 6A. *Judgment after Trial of Questions of Account by Referee* (*a*).

In the High Court of Justice. 18 . No.

Division.

Between ..... Plaintiff,

and

..... Defendant.

The day of , 18 .

The questions of account in this action having been referred to ,

(*a*) Added by R. S. C., April, 1880.

and he having found that there is due from the to the the sum of £ and directed that the do pay the costs of the reference:

It is this day adjudged that the recover against the said £ and costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a master's certificate dated the day of 18 .

---

### 7. *Judgment upon Motion for Judgment.*

[Title, &c.]

30th November, 1876.

This day before Mr. X. of counsel for the plaintiff [*or as the case may be*], moved on behalf of the said [*state judgment moved for*], and the said Mr. X. having been heard of counsel for and Mr. Y. of counsel for the court adjudged .

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### 8. *Interlocutory Judgment in Default of Appearance or Defence where Demand unliquidated (a).*

In the High Court of Justice.

Division. 18 No.

Between Plaintiff,

and

Defendant.

The day of 18 .

No*

herein.

It is this day adjudged that the plaintiff recover against the defendant† to be assessed.

* "appearance having been entered to the writ of summons" or "statement of defence or demurrer having been delivered by the defendant."

† "the value of the goods," or "damages," or both, as the case may be.

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### 9. *Judgment after Appearance and Order under Order XIV., Rule 1a (a).*

In the High Court of Justice.

Division. 18 No.

Between Plaintiff,

and

Defendant.

The day of 18

The defendant having appeared to the writ of summons herein, and the plaintiff having by the order of dated the day of 18 obtained leave to sign judgment under the rules of the Supreme Court, Order XIV., Rule 1A, for‡

It is this day adjudged that the plaintiff recover against the defendant £ and costs to be taxed.

The above costs have been taxed and allowed at £ as appears by a master's certificate dated the day of 18 .

‡ Recite order.

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(*a*) Added by R. S. C., April, 1880.

10. *Judgment after Trial by Court without Jury* (*a*).

In the High Court of Justice.
Division. 18 No.
Between Plaintiff,
and
Defendant.
This action having on the day of 18 been tried before and the said on the day of 18 having ordered that judgment be entered for the for £
It is this day adjudged that the recover from the £ and costs to be taxed.
The above costs have been taxed and allowed at £ as appears by a master's certificate dated the day of 18 .
Judgment entered the day of 18 .

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11. *Judgment in pursuance of Order* (*a*).

In the High Court of Justice.
Division. 18 No.
Between Plaintiff,
and
Defendant.
Pursuant to the order of dated 18 whereby it was ordered and default having been made
It is this day adjudged that the plaintiff recover against the said defendant £ and costs to be taxed.
The above costs have been taxed and allowed at £ as appears by a master's certificate dated the day of 18 .

---

12. *Judgment on Certificate of Registrar of County Court* (*a*).

In the High Court of Justice.
Division. 18 No.
Between Plaintiff,
and
Defendant.
The day of 18
This action having been ordered under section 26 of the County Court Act, 1856 (19 & 20 Vict. c. 108), to be tried in the county court of and the registrar of that court having certified that the result was
It is this day adjudged that recover against £ and costs to be taxed.
The above costs have been taxed and allowed at £ as appears by a master's certificate dated the day of 18 .

---

13. *Judgment for Defendant's Costs on Discontinuance* (*a*).

In the High Court of Justice.
Division. 18 No.
Between Plaintiff,
and
Defendant.
The day of 18 .
The plaintiff having by a notice in writing dated the day of 18 ,*

* "wholly discontinued this action" or "withdrawn his claim in this action for" or

(*a*) Added by R. S. C., April, 1880.

"withdrawn so much of his claim in this action as relates to"—— or as the case may be.

It is this day adjudged that the defendant recover against the plaintiff costs to be taxed.

The above costs have been taxed and allowed at £ as appears by a master's certificate dated the day of 18 .

---

14. *Judgment for Plaintiff's Costs after Confession of Defence* (*a*).

In the High Court of Justice.
Division. 18 No.

Between Plaintiff,
and
Defendant.

The day of 18

The defendaant in his statement of defence herein having alleged a ground of defence which arose after the commencement of this action, and the plaintiff having on the day of 18 delivered a confession of that defence:

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at £ as appears by a master's certificate dated the day of 18

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15. *Judgment for Costs after Acceptance of Money paid into Court* (*a*).

In the High Court of Justice.
Division. 18 No.

Between Plaintiff,
and
Defendant.

The day of 18

The defendant having paid into court in this action the sum of £ in satisfaction of the plaintiff's claim, and the plaintiff having by his notice dated the day of 18 , accepted that sum in satisfaction of his entire cause of action, and the plaintiff's costs herein having been taxed, and the defendant not having paid the same within forty-eight hours after the said taxation:

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at £ as appears by a master's certificate dated the day of 18

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16. *Judgment where no Judgment entered at Trial by Jury* (*a*).

In the High Court of Justice.
Division. 18 No.

Between Plaintiff,
and
Defendant.

* Date of order of court.

*The day of 18

This action having on the 18 been tried before and a

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(*a*) Added by R. S. C., April, 1880.

jury of the of and the jury having found and the not having thought fit to order any judgment to be entered,
Now on motion before the court for judgment on behalf of the the court having
It is this day adjudged that the recover against the the sum of £ and costs to be taxed.
The above costs have been taxed and allowed at £ , as appears by a master's certificate dated the day of 18 .
Judgment entered the day of 18 .

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### 17. *Judgment after Motion on Leave reserved* (*a*).

In the High Court of Justice. 18 . No. .
Division.

Between Plaintiff,
and
Defendant.

*The day of 18 .
This action having on the 18 been tried before and a jury of the of , and the jury having found and having ordered that judgment be entered for subject to leave to the to move to set aside the judgment , now on motion before the court for judgment on behalf of the , the court having , it is this day adjudged that the said judgment† .
The above costs have been taxed and allowed at £ , as appears by a master's certificate dated the day of 18 .
Judgment entered the day of 18 .

* Date of order of court.

† "do stand" or "be set aside and that the recover against the the sum of £ and costs to be taxed."

---

### 18. *Judgment on Motion after Trial of Issue* (*a*).

In the High Court of Justice. 18 . No. .
Division.

Between Plaintiff,
and
Defendant.

*The day of 18 .
The † of fact arising in this action by the order dated the day of ordered to be tried before having on the day of been tried before , and the having found , now on motion before the court for judgment on behalf of the , the court having , it is this day adjudged that the recover against the the sum of £ and costs to be taxed.
The above costs have been taxed and allowed at £ , as appears by a master's certificate dated the day of 18 .
Judgment entered the day of 18 .

* Date of order of court.

† "issues" or "questions."

---

(*a*) Added by R. S. C., April, 1880.

### 19. *Judgment on Motion generally* (*a*).

In the High Court of Justice. 18 . No. .
Division.

Between Plaintiff,
and
Defendant.

* Date of order of court.

† As in order of court.

*The day of 18 .

This action having on the day of 18 come on before the court on motion for judgment on behalf of the , and the court after hearing counsel for the having ordered that† , it is this day adjudged that the recover against the the sum of £ and costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a master's certificate dated the day of 18 .

Judgment entered the day of 18 .

---

(*a*) Added by R. S. C., April, 1880.

# APPENDIX (E).

## Forms of Præcipe.

### 1. *Fieri Facias.*

18 . B. No.

In the High Court of Justice.
Division.

Between A. B. ..... Plaintiff,
and
C. D. and others ..... Defendants.

Seal a writ of fieri facias directed to the sheriff of to levy against C. D. the sum of £ and interest thereon at the rate of £ per centum per annum from the day of [and £ costs] to .

Judgment [*or* order] dated day of .
[Taxing master's certificate, dated day of .]

X. Y., solicitor for [*party on whose behalf writ is to issue*].

---

### 2. *Elegit.*

18 . B. No.

In the High Court of Justice.
Division.

Between A. B. ..... Plaintiff,
and
C. D. and others ..... Defendants.

Seal a writ of elegit directed to the sheriff of against of in the county of for not paying to A. B. the sum of £ together with interest thereon, from the day of [and the sum of for costs], with interest thereon at the rate of 4*l.* per centum per annum.

Judgment [*or* order] dated day of 18 .
[Taxing master's certificate, dated day of 18 .]

X. Y.,
Solicitor for

---

### 3. *Venditioni Exponas.*

18 . B. No.

In the High Court of Justice.
Division.

Between A. B. ..... Plaintiff,
and
C. D. and others ..... Defendants.

Seal a writ of venditioni exponas directed to the sheriff of to

sell the goods and of C. D. taken under a writ of fieri facias in this action tested day of .

X. Y.,
Solicitor for

---

4. *Fieri Facias de Bonis Ecclesiasticis.*

18 . B. No.

In the High Court of Justice.
Division.
Between A. B. ..... Plaintiff,
and
C. D. ..... Defendant.

Seal a writ of fieri facias de bonis ecclesiasticis directed to the bishop [*or* archbishop, *as the case may be*] of to levy against C. D. the sum of £ .

Judgment [*or* order] dated day of .
[Taxing master's certificate, dated day of .]

X. Y.,
Solicitor for

---

5. *Sequestrari Facias de Bonis Ecclesiasticis.*

18 . B. No.

In the High Court of Justice.
Division.
Between A. B. ..... Plaintiff,
and
C. D. and others ..... Defendants.

Seal a writ of sequestrari facias directed to the Lord Bishop of against C. D. for not paying to A. B. the sum of £ .

---

6. *Writ of Sequestration.*

18 . B. No. .

In the High Court of Justice.
Division.
Between A. B..... Plaintiff,
and
C. D. and others..... Defendants.

Seal a writ of sequestration against C. D. for not at the suit of A. B. directed to [*names of Commissioners*].

Order dated day of .

---

7. *Writ of Possession.*

18 . B. No. .

In the High Court of Justice.
Division.
Between A. B..... Plaintiff,
and
C. D. and others..... Defendants.

Seal a writ of possession directed to the sheriff of to deliver possession to A. B. of .

Judgment dated day of .

### 8. *Writ of Delivery.*

18 . B. No. .

In the High Court of Justice.
Division.

Between A. B..... Plaintiff,
and
C. D. and others..... Defendants.

Seal a writ of delivery directed to the sheriff of to make delivery to A. B. of .

---

### 9. *Writ of Attachment.*

18 . B. No. .

In the High Court of Justice.
Division.

Between A. B..... Plaintiff,
and
C. D. and others..... Defendants.

Seal in pursuance of order dated day of , an attachment directed to the sheriff of against C. D. for not delivering to A. B.

---

### 10. *Distringas against Ex-Sheriff* (*a*).

In the High Court of Justice.
Division. 18 No.

Between Plaintiff,
and
Defendant.

Seal a writ of distringas nuper vicecomitem quod venditioni exponat, directed to the sheriff of , to sell the goods and of , taken under a writ of fieri facias in this action tested the day of 18 .

Dated the day of 18 .
(Signed)
(Address)
Solicitor for the

---

### 11. *Inquiry* (*a*).

In the High Court of Justice.
Division. 18 No.

Between Plaintiff,
and
Defendant.

Seal a writ of inquiry directed to the sheriff of to assess the damages in this action.

Judgment dated

Dated the day of 18 .
(Signed)
(Address)
Solicitor for the

---

(*a*) Added by R. S. C., April, 1880.

### 12. *Certiorari* (*a*).

In the High Court of Justice.
Division. 18 No.
Between Plaintiff,
and
Defendant.

Seal in pursuance of order dated a writ of certiorari directed to .

Dated the day of 18 .
(Signed)
(Address)
Solicitor for the

---

### 13. *Prohibition* (*a*).

In the High Court of Justice.
Division. 18 No.
In the matter of a certain now depending in the court.
Between Plaintiff,
and
Defendant.

Seal a writ of prohibition directed to the judge of the above-named court and to the above-named plaintiff to prohibit them from further proceeding in the said 18 .

Dated the day of 18 .
(Signed)
(Address)
Solicitor for the

---

### 14. *Mandamus* (*a*).

In the High Court of Justice.
Division. 18 No.
Between Plaintiff,
and
Defendant.

Seal in pursuance of order dated , a writ of mandamus directed to , commanding to returnable .

Dated the day of 18 .
(Signed)
(Address)
Solicitor for the

---

### 15. *Habeas Corpus ad Testificandum* (*a*).

In the High Court of Justice.
Division. 18 No.
Between Plaintiff,
and
Defendant.

Seal in pursuance of order dated a writ of habeas corpus ad testificandum directed to the to bring before .

Dated the day of 18 .
(Signed)
(Address)
Solicitor for the

---

(*a*) Added by R. S. C., April, 1880.

16. *Commission to examine Witnesses* (*a*).

In the High Court of Justice.
Division. 18 No.
Between Plaintiff,
and
Defendant.

Seal in pursuance of order dated a writ in the nature of a mandamus or commission to examine witnesses directed to .
Dated the day of 18 .
(Signed)
(Address)
Solicitor for the

---

17. *Commission of Partition* (*a*).

In the High Court of Justice.
Division. 18 No.
Between Plaintiff,
and
Defendant.

Seal in pursuance of order dated a commission of partition directed to . Returnable .
Dated the day of 18 .
(Signed)
(Address)
Solicitor for the

---

18. *Amended Summons* (*a*).

In the High Court of Justice.
Division. 18 No.
Between Plaintiff,
and
Defendant.

Amend in pursuance of order [*or* fiat] dated , the writ of summons in this action by* .
Dated the day of 18 .
(Signed)
(Address)
Solicitor for the

* Set out amendments when required.

---

19. *Renewed Summons* (*a*).

In the High Court of Justice.
Division. 18 No.
Between Plaintiff,
and
Defendant.

Seal in pursuance of order dated , a renewed writ of summons in this action indorsed as follows
Dated the day of 18 .
(Signed)
(Address)
Solicitor for the

---

(*a*) Added by R. S. C., April, 1880.

### 20. *Subpœna* (*a*).

In the High Court of Justice.
Division. 18 . No.

Between Plaintiff,
and
Defendant.

Seal writ of subpœna on behalf of the directed to returnable .
Dated the day of 18 .
(Signed)
(Address)
Solicitor for the .

---

### 21. *Entry of Appearance* (*a*).

In the High Court of Justice.
Division. 18 . No.

Between Plaintiff,
and
Defendant.

Enter an appearance for in this action .
Dated the day of 18 .
(Signed) of* agent for of
The said defendant require a statement of claim to be delivered.

* If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

---

### 22. *Entry of Appearance limiting Defence* (*a*).

In the High Court of Justice.
Division. 18 . No.

Between Plaintiff,
and
Defendant.

Enter an appearance for the defendant in this action. The said defendant limits his defence to part only of the property mentioned in the writ of summons, namely, to
The address of is
Dated the day of 18 .
(Signed) of* agent for of
The said defendant require a statement of claim to be delivered.

---

### 23. *Entry of Appearance, Order L., Rule* 4 (*a*).

In the High Court of Justice.
Division. 18 . No.

Between Plaintiff,
and
Defendant.

Enter an appearance for who has been served with an order dated the day of to carry on and prosecute the proceedings in this action.
Dated the day of 18 .
(Signed) of* agent for of

---

(*a*) Added by R. S. C., April, 1880.

24. *Entry of Appearance, Order XVI., Rule* 18 (*a*).

In the High Court of Justice.
Division. 18 . No.

Between Plaintiff,
and
Defendant.

Enter an appearance for to the notice issued in this action on the day of 18 by the defendant under the Rules of the Supreme Court, Order XVI., Rule 18 .
Dated the day of 18 .
(Signed) of* agent for of
The said defendant require a statement of claim to be delivered.

* If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

---

25. *Entry of Appearance to Counter-claim* (*a*).

In the High Court of Justice.
Division. 18 . No.

Between Plaintiff,
and
Defendant.

Enter an appearance for to the counter-claim of the above-named defendant in this action.
Dated the day of 18 .
(Signed) of* agent for of

---

26. *Entry of Action for Trial* (*a*).

In the High Court of Justice.
Division. 18 . No.

Between Plaintiff,
and
Defendant.

Enter this action for trial.
Dated the day of 18 .
(Signed)
(Address)

---

27. *Entry of Appeal* (*a*).

In the High Court of Justice.
Division. 18 . No.

Between Plaintiff,
and
Defendant.

Enter this appeal from the order [*or* judgment] of in this action, dated the day of 18 .
Dated the day of 18 .
(Signed)
(Address)

---

(*a*) Added by R. S. C., April, 1880.

28. *Entry of Demurrer for Argument* (*a*).

In the High Court of Justice.
Division. 18 . No.

Between Plaintiff,
and
Defendant.

Enter for argument the demurrer of to the in this action.
Dated the day of 18 .
(Signed)
(Address)

---

29. *Entry for Argument generally* (*a*).

In the High Court of Justice.
Division. 18 . No. .

Between Plaintiff,
and
Defendant.

Set down for argument the .
Dated the day of 18 .
(Signed)
(Address)

---

30. *Entry of Special Case* (*a*).

In the High Court of Justice.
Division. 18 . No. .

Between Plaintiff,
and
Defendant.

Set down the , dated the day of , 18 , of Mr. the referee in this for hearing as a special case.
Dated the day of , 18 .
(Signed)
(Address)

---

31. *Memorandum of Service of Notice of Judgment* (*a*).

In the High Court of Justice.
Division. 18 . No. .

Between Plaintiff,
and
Defendant.

Enter memorandum of service of notice of judgment made in this

---

(*a*) Added by R. S. C., April, 1880.

action, and dated the day of , 18 , on the undermentioned persons, viz.:—

| Name of Party served. | Date of Service. |
|---|---|
| | |

Dated the day of , 18 .
(Signed)
(Address)

---

32. *Search* (*a*).

In the High Court of Justice.
Division. 18 . No. .

*v.*

Search for .
Dated the day of , 18 .
(Signed)
(Address)
Agent for .
Solicitor for .

(*a*) Added by R. S. C., April, 1880.

# APPENDIX (F).

## Forms of Writs.

### 1. *Writ of Fieri Facias.*

18 . B. No. .

In the High Court of Justice.
Division.

Between A. B..... Plaintiff,
and
C. D. and others..... Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith,
To the sheriff of , greeting.

We command you that of the goods and chattels of C. D. in your bailiwick you cause to be made the sum of £ and also interest thereon at the rate of £ per centum per annum from the day of (*a*) which said sum of money and interest were lately before us in our High Court of Justice in a certain action [*or* certain actions, *as the case may be*] wherein A. B. is plaintiff and C. D. and others are defendants [*or* in a certain matter there depending, intituled, "In the matter of E. F.," *as the case may be*], by a judgment [*or* order, *as the case may be*] of our said court, bearing date the day of adjudged [*or* ordered, *as the case may be*] to be paid by the said C. D. to A. B., together with certain costs in the said judgment [*or* order, *as the case may be*] mentioned, and which costs have been taxed and allowed by one of the taxing masters of our said court at the sum of £ as appears by the certificate of the taking master, dated the day of . And that of the goods and chattels of the said C. D. in your bailiwick you further cause to be made the said sum of £ [costs], together with interest thereon at the rate of 4*l.* per centum per annum from the day of (*b*), and that you have that money and interest before us in our said court immediately after the execution hereof, to be paid to the said A. B. in pursuance of the said judgment [*or* order, *as the case may be*]. And in what manner you shall have executed this our writ make appear to us in our said court immediately after the execution thereof. And have there then this writ.

Witness, &c.

---

(*a*) Day of the judgment or order, or day on which money directed to be paid, or day from which interest is directed by the order to run, as the case may be.

(*b*) The date of the certificate of taxation. The writ *must* be so moulded as to follow the substance of the judgment or order.

### 1a. *Fieri Facias on order for Costs* (*a*).

18 . No.

In the High Court of Justice.
Division.
Between Plaintiff,
and
Defendant.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of greeting: We command you, that of the goods and chattels of in your bailiwick you cause to be made the sum of for certain costs which by an order of our High Court of Justice dated the day of 18 , were ordered to be paid by the said to and which have been taxed and allowed at the said sum, and interest on the said sum at the rate of 4*l.* per centum per annum from the day of 18 , and that you have the said sum and interest before us in our said court, immediately after the execution hereof, to be rendered to the said . And in what manner you shall have executed this our writ make appear to us immediately after the execution hereof. And have there then this writ.

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of 18 . Levy £ and £ for costs of execution, &c., and also interest on £ at 4*l.* per centum per annum from the day of 18 , until payment; besides sheriff's poundage, officers' fees, costs of levying, and all other legal incidental expenses.

This writ was issued by of agent for of solicitor for the

The is a and resides at in your bailiwick.

---

### 2. *Writ of Elegit.*

187 , B. No. .

In the High Court of Justice.
Division.
Between A. B..... Plaintiff,
and
C. D. and others.. Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith,
To the sheriff of , greeting.

Whereas lately in our High Court of Justice in a certain action [*or* certain actions, *as the case may be*] there depending, wherein A. B. is plaintiff and C. D. and others are defendants [*or* in a certain matter there depending, intituled "In the matter of E. F.," *as the case may be*] by a judgment [*or* order, *as the case may be*] of our said court made in the said action [*or* matter, *as the case may be*], and bearing date the day of , it was adjudged [*or* ordered, *as the case may be*] that C. D. should pay unto A. B. the sum of £ together with interest thereon after the rate of £ per centum per annum from the day of , together also with certain costs as in the said judgment [*or* order, *as the case may be*] mentioned, and which costs have been taxed and allowed by one of the taxing masters of our said court, at the sum of £ as appears by the certificate of the said taxing master, dated the day of . And afterwards the said A. B. came into

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(*a*) Added by R. S. C., April, 1880.

our said court, and according to the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick as the said C. D., or any one in trust for him, was seised or possessed of on the day of , in the year of our Lord (*c*) or at any time afterwards, or over which the said C. D. on the said day of , or at any time afterwards had any disposing power which he might without the assent of any other person exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £ and £ , together with interest upon the said sum of £ , at the rate of £ per centum per annum from the said day of and on the said sum of £ (costs), at the rate of 4*l.* per centum per annum from the day of , shall have been levied. Therefore we command you that without delay you cause to be delivered to the said A. B. by a reasonable price and extent all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands and tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said C. D., or any person or persons in trust for him, was or were seised or possessed of on the said day of (*d*) or at any time afterwards, or over which the said C. D. on the said day of (*d*) or at any time afterwards had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said A. B., as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns until the said two several sums of £ and £ together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us in our court aforesaid, immediately after the execution thereof, under your seals, and the seals of those by whose oath you shall make the said extent and appraisement. And have there then this writ.

Witness ourselves at Westminster, &c.

---

### 3. *Writ of Venditioni Exponas.*

1875. B. No. .

In the High Court of Justice.
Division.

Between A. B..... Plaintiff,
and
C. D. and others ..... Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith,

To the sheriff of , greeting:

Whereas by our writ we lately commanded you that of the goods and chattels of C. D. [*here recite the fieri facias to the end*]. And on the day of you returned to us in the Division of our High Court of Justice aforesaid, that by virtue of the said writ to you directed you had taken goods and chattels of the said C. D. to the value of the money

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(*c*) The day on which the judgment or order was made.

(*d*) The day on which the decree or order was made.

and interest aforesaid, which said goods and chattels remained in your hands unsold for want of buyers. Therefore we, being desirous that the said A. B. should be satisfied his money and interest aforesaid, command you that you expose to sale and sell, or cause to be sold, the goods and chattels of the said C. D., by you in form aforesaid taken, and every part thereof, for the best price that can be gotten for the same, and have the money arising from such sale before us in our said Court of Justice immediately after the execution hereof, to be paid to the said A. B. And have there then this writ.

Witness ourself at Westminster, the day of in the year of our reign.

---

### 4. *Writ of Fieri Facias de Bonis Ecclesiasticis.*

1875. B. No.

In the High Court of Justice.
Division.

Between A. B. ..... Plaintiff,
and
C. D. and others ..... Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To the Right Reverend Father in God [*John*] by Divine permission Lord Bishop of , greeting: We command you, that of the ecclesiastical goods of C. D., clerk in your diocese, you cause to be made £ which lately before us in our High Court of Justice in a certain action [*or* certain actions, *as the case may be*] wherein A. B. is plaintiff and C. D. is defendant [*or* in a certain matter there depending, intituled "In the matter of E. F.," *as the case may be*], by a judgment [*or* order, *as the case may be*], of our said court, bearing date the day of , was adjudged [*or* ordered, *as the case may be*] to be paid by the said C. D. to the said A. B., together with interest on the said sum of £ at the rate of £ per centum per annum, from the day of , and have that money, together with such interest as aforesaid, before us in our said court immediately after the execution hereof, to be rendered to the said A. B., for that our sheriff of returned to us in our said court on [*or* "at a day now past"] that the said C. D. had not any goods or chattels or any lay fee in his bailiwick whereof he could cause to be made the said £ and interest aforesaid or any part thereof, and that the said C. D. was a beneficed clerk (to wit) rector of rectory [*or* vicar of the vicarage] and parish church of , in the said sheriff's county, and within your diocese [*as in the return*]; and in what manner you shall have executed this our writ make appear to us in our said court immediately after the execution hereof, and have you there then this writ. Witness ourself at Westminster, the day of in the year of our Lord .

---

### 5. *Writ of Fieri Facias to the Archbishop de Bonis Ecclesiasticis during the vacancy of a Bishop's See.*

Victoria, [&c. *as in the preceding form*]: To the Right Reverend Father in God [*John*] by Divine Providence Lord Archbishop of Canterbury, Primate of all England and Metropolitan, greeting: We command you, that of the ecclesiastical goods of C. D., clerk in the diocese of , which is within the province of Canterbury, as ordinary of that church, the episcopal see of now being vacant, you cause to be made [&c., *conclude as in the preceding form*].

### 6. *Writ of Sequestrari Facias de Bonis Ecclesiasticis.*

1875. B. No.

In the High Court of Justice.
Division.

Between A. B. ..... Plaintiff,
and
C. D. and others ..... Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To the Right Reverend Father in God [*John*] by Divine permission Lord Bishop of , greeting: Whereas we lately commanded our sheriff of that he should omit not by reason of any liberty of his county, but that he should enter the same, and cause [to be made, *if after the return to a fieri facias, or* delivered, *if after the return to an elegit, &c., and in either case recite the former writ*]. And whereupon our said sheriff of , on , [*or* "at a day past"] returned to us in the Division of our said Court of Justice, that the said C. D. was a beneficed clerk; that is to say, rector of the rectory [*or* vicar of the vicarage] and parish church of in the county of , and within your diocese, and that he had not any goods or chattels, or any lay fee in his bailiwick [*here follow the words of the sheriff's return*]. Therefore we command you that you enter into the said rectory [*or* vicarage] and parish church of , and take and sequester the same into your possession and that you hold the same in your possession until you shall have levied the said £ and interest aforesaid, of the rents, tithes, rent-charges in lieu of tithes, oblations, obventions, fruits, issues and profits thereof, and other ecclesiastical goods in your diocese of and belonging to the said rectory [*or* vicarage] and parish church of , and to the said C. D. as rector [*or* vicar] thereof to be rendered to the said A. B.; and what you shall do therein make appear to us in our said court immediately after the execution hereof, and have you there then this writ. Witness ourself at Westminster, the day of , in the year of our Lord .

---

### 7. *Writ of Possession.*

18 . B. No.

In the High Court of Justice.
Division.

Between A. B. ..... Plaintiff,
and
C. D. and others ..... Defendants.

Victoria, to the sheriff of , greeting: Whereas lately in our High Court of Justice, by a judgment of the Division of the same court A. B. recovered [*or* E. F. was ordered to deliver to A. B.] possession of all that with the appurtenances in your bailiwick: Therefore we command you that you omit not by reason of any liberty of your county, but that you enter the same, and without delay you cause the said A. B. to have possession of the said land and premises with the appurtenances; and in what manner you have executed this our writ make appear to the judges of the Division of our High Court of Justice immediately after the execution hereof, and have you there then this writ. Witness, &c.

---

### 8. *Writ of Delivery.*

18 . B. No.

In the High Court of Justice.
Division.
Between A. B. ..... Plaintiff,
and
C. D. and others ..... Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of , greeting: We command you, that without delay you cause the following chattels, that is to say [*here enumerate the chattels recovered by the judgment for the return of which execution has been ordered to issue*], to be returned to A. B., which the said A. B. lately in our recovered against C. D. [*or* C. D. was ordered to deliver to the said A. B.] in an action in the Division of our said court. And we further command you, that if the said chattels cannot be found in your bailiwick, you distrain the said C. D. by all his lands and chattels in your bailiwick, so that neither the said C. D. nor any one for him do lay hands on the same until the said C. D. render to the said A. B. the said chattels; and in what manner you shall have executed this our writ make appear to the judges of the Division of our High Court of Justice immediately after the execution hereof, and have you there then this writ. Witness, &c.

---

The like, but instead of a Distress until the Chattel is returned, commanding the Sheriff to levy on Defendant's Goods the assessed value of it.

[*Proceed as in the preceding form until the *, and then thus:*] And we further command you, that if the said chattels cannot be found in your bailiwick, of the goods and chattels of the said C. D. in your bailiwick you cause to be made £ [*the assessed value of the chattels*]; and in what manner you shall have executed this our writ make appear to the judges of the Division of our High Court of Justice at Westminster immediately after the execution hereof, and have you there then this writ. Witness, &c.

---

### 9. *Writ of Attachment.*

187 . B. No.

In the High Court of Justice.
Division.
Between A. B. ..... Plaintiff,
and
C. D. and others ..... Defendants.

Victoria, &c.

To the sheriff of , greeting:

We command you to attach C. D. so as to have him before us in the Division of our High Court of Justice wheresoever the said court shall then be, there to answer to us, as well touching a contempt which he it is alleged hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said court shall make in this behalf, and hereof fail not, and bring this writ with you. Witness, &c.

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## 10. *Writ of Sequestration.*

187 . B. No.

In the High Court of Justice.
Division.
Between A. B..... Plaintiff,
and
C. D. and others..... Defendants.

Victoria, &c.

To [*names of not less than four Commissioners*], greeting:

Whereas lately in the Division of our High Court of Justice in a certain action there depending, wherein A. B. is plaintiff and C. D. and others are defendants [*or* in a certain matter then depending, intituled "In the matter of E. F.," *as the case may be*], by a judgment [*or* order, *as the case may be*] of our said court made in the said action [*or* matter], and bearing date the day of 187 , it was ordered that the said C. D. should [pay into court to the credit of the said action the sum of £ , *or as the case may be*]. Know ye, therefore, that we, in confidence of your prudence and fidelity, have given, and by these presents do give to you, or any three or two of you, full power and authority to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said C. D., and to collect, receive, and sequester into your hands not only all the rents and profits of his said messuages, lands, tenements, and real estate, but also his goods, chattels, and personal estates whatsoever; and therefore we command you, any three or two of you, that you do, at certain proper and convenient days and hours, go to and enter upon all the messuages, lands, tenements, and real estates of the said C. D., and that you do collect, take and get into your hands not only the rents and profits of the said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said C. D. shall [pay into court to the credit of the said action the sum of £ , *or as the case may be*] clear his contempt, and our said court make other order to the contrary.

---

## 11. *Delivery or Assessed Value* (*a*).

In the High Court of Justice.
Division. 18 . No.
Between Plaintiff,
and
Defendant.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of greeting.

We command you that without delay you cause to be returned to , the following chattels, namely* which the said lately† in an action in our High Court of Justice.

And we further command you that if the said chattels cannot be found in your bailiwick, then of the goods and chattels of the said in your bailiwick you cause to be made £ .‡ And in what manner you shall have executed this our writ make appear to us in our said court immediately after the execution hereof. And have there then this writ.

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of , in the year of our Lord one thousand eight hundred and .

If the chattels cannot be found in your bailiwick, levy £ the assessed value thereof, and interest thereon at 4*l.* per centum per annum, from the day of 18 until payment, besides sheriff's

* Enumerate chattels recovered by judgment for the return of which execution has been ordered to issue.

† "Recovered against" or "was ordered to deliver to the said."

‡ The assessed value of the chattels.

(*a*) Added by R. S. C., April, 1880.

poundage, officers' fees, costs of levying, and all other legal incidental expenses.

This writ was issued by of agent for of solicitor to the who reside at .

The defendant is a and resides at in your bailiwick.

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12. *Distringas against Ex-Sheriff* (*a*).

In the High Court of Justice.

Division. 18 . No.

Between Plaintiff,

and

Defendant.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of greeting.

We command you that you distrain late sheriff of your county aforesaid by all his lands and chattels in your bailiwick, so that neither he nor anyone by him do lay hands on the same until you shall have another command from us in that behalf, and that you answer to us for the issues of the same, so that the said expose for sale and sell or cause to be sold for the best price that can be gotten for the same, those goods and chattels which were of in your bailiwick, to the value of £ * the sum of £ which lately before us in our High Court of Justice in a certain action wherein plaintiff and defendant by a † of our said court bearing date the day of was ‡ to be paid by the said to the said and of the sum of £ the amount at which the costs in the said † mentioned have been taxed and allowed, and of interest on the said sum of £ at the rate of 4*l.* per centum per annum from the day of and on the said sum of £ at the same rate from the day of which goods and chattels he lately took by virtue of our writ, and which remain in his hands for want of buyers, as the said late sheriff hath lately returned to us in our said court. And have the money arising from such sale before us in our said court immediately after the execution hereof, to be paid to the said . And have there then this writ.

* "the amount of," or "part of."

† "judgment" or "order."

‡ "adjudged" or "ordered."

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of in the year of our Lord one thousand eight hundred and

This writ was issued by of agent for of solicitor for the who reside at

The defendant is a and resides at in your bailiwick.

---

13. *Fieri Facias on Judgment removed from Lord Mayor's Court* (*a*).

In the High Court of Justice.

Division. 18 . No.

Between Plaintiff,

and

Defendant.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of greeting:

Whereas by the judgment of the Mayor's Court, London, it has been

(*a*) Added by R. S. C., April, 1880.

adjudged that the said recover against the said the sum of £ .*

And whereas this judgment has been removed into our High Court of Justice, and has become of the same effect as a judgment recovered in that court.

And whereas the costs attendant on the removal of the said judgment were on the† day of 18 taxed and allowed at ‡

Therefore we command you, that of the goods and chattels of the said in your bailiwick, you cause to be made the said sums of £ * and £ ‡ with interest thereon at the rate of 4*l.* per centum per annum from the said †day of 18 , and that you have that money and interest before us in our said court immediately after the execution hereof, to be rendered to the said . And in what manner you shall have executed this our writ make appear to us in our said court immediately after the execution hereof. And have then there this writ.

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of in the year of our Lord one thousand eight hundred and

Levy £ , and £ for costs of execution, and also interest on £ at 4*l.* per centum per annum, from the day of 18 , until payment; besides sheriff's poundage, officers' fees, costs of levying, and all other legal incidental expenses.

This writ was issued by of agent for of solicitor for the said plaintiff.

The defendant is a and resides at in your bailiwick.

* Debt and costs.

† Day of removal.

‡ Costs of removal.

# APPENDIX (G).

[**** Added by R. S. C., April, 1880.]

## 1. *Subpœna ad Testificandum* (*General Form*).

In the High Court of Justice.
Division. 18 . No.

Between Plaintiff,
and
Defendant.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to* greeting: We command you to attend before at on day the day of 18 , at the hour of in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the†

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of in the year of our Lord one thousand eight hundred and

* The names of three witnesses may be inserted.

† "Plaintiff" or "defendant."

## 2. *Subpœna Duces Tecum* (*General Form*).

In the High Court of Justice.
Division. 18 . No.

Between Plaintiff,
and
Defendant.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to‡ greeting: We command you to attend before at on day the day of 18 , at the hour of in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the and also to bring with you and produce at the time and place aforesaid §

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of in the year of our Lord one thousand eight hundred and

‡ The names of three witnesses may be inserted.

§ Specify documents to be produced.

## 3. *Subpœna ad Testificandum at Assizes.*

In the High Court of Justice.
Division. 18 . No.

Between Plaintiff,
and
Defendant.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to‖ greeting: We command you to attend before our justices assigned to take the assizes in and for the county of to be holden at on day the day of 18 , at the hour of in the noon, and so from

‖ The names of three witnesses may be inserted.

day to day during the said assizes until the above cause is tried, to give evidence on behalf of the

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of in the year of our Lord one thousand eight hundred and

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### 4. *Subpœna Duces Tecum at Assizes.*

In the High Court of Justice.
Division. 18 . No.

Between Plaintiff,
and
Defendant.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to * greeting: We command you to attend before our justices assigned to take the assizes in and for the county of to be holden at on day the day of 18 , at the hour of in the noon, and so from day to day during the said assizes, until the above cause is tried, to give evidence on behalf of the , and also to bring with you and produce at the time and place aforesaid †

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of in the year of our Lord one thousand eight hundred and

* The names of three witnesses may be inserted.

† Specify documents to be produced.

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### 5. *Subpœna ad Testificandum at Sittings of High Court.*

In the High Court of Justice.
Division. 18 . No. .

Between Plaintiff,
and
Defendant.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to* greeting: We command you to attend at the sittings of the Division of our High Court of Justice, for† to be holden at on day the day of 18, at the hour of in the noon, and so from day to day during the said sittings, until the above cause is tried, to give evidence on behalf of the .

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of in the year of our Lord one thousand eight hundred and .

* The names of three witnesses may be inserted.

† London or Westminster.

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### 6. *Subpœna Duces Tecum at Sittings of High Court.*

In the High Court of Justice.
Division. 18 . No. .

Between Plaintiff,
and
Defendant.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to* : We command you to attend at the sittings of the Division of the High Court of Justice for† , to be holden at on day the day of 18 , at the hour of o'clock in the noon, and so from day to

* The names of three witnesses may be inserted.

† London or Westminster.

day until the above cause is tried, to give evidence on behalf of the and also to bring with you and produce at the time and place aforesaid.* * Specify documents to be produced.

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of in the year of our Lord one thousand eight hundred and .

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### 7. *Writ of Inquiry for Assessment of Damages.*

In the High Court of Justice.
Division. 18 . No. .

Between Plaintiff,
and
Defendant.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of greeting.

Whereas it has been adjudged that the plaintiff recover against the defendant damages to be assessed .

Therefore we command you, that by the oaths of twelve good and lawful men of your bailiwick you inquire what damages the plaintiff is entitled to recover under the said judgment, and that forthwith thereafter you send the inquisition which you shall take thereupon to our said court, under your seal, and the seals of those by whose oaths you take the inquisition, together with this writ.

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of in the year of our Lord one thousand eight hundred and .

This writ was issued by of agent for of solicitor for the who reside at .

The defendant is a and resides at in your bailiwick.

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### 8. *Certiorari to County Court.*

In the High Court of Justice.
Division. 18 . No.

Between Plaintiff,
and
Defendant.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the judge of the County Court holden at greeting.

We, willing for certain causes to be certified of a plaint levied in our court before you against at the suit of command you that you send to us forthwith in the Division of our High Court of Justice the said plaint with all things touching the same, as fully and entirely as the same remain in our said court before you, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of , in the year of our Lord one thousand eight hundred and

This writ was issued by of agent for of solicitor for the who reside at

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### 9. *Certiorari* (*General*).

In the High Court of Justice.
Division. 18 . No.

Between Plaintiff,
and
Defendant.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the greeting.

We, willing for certain causes to be certified of command you that you send to us in our High Court of Justice on the day of the aforesaid, with all things touching the same, as fully and entirely as they remain in together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of , in the year of our Lord one thousand eight hundred and

This writ was issued by of agent for of solicitor for the who reside at

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### 10. *Prohibition.*

In the High Court of Justice.
Division. 18 . No.

Between Plaintiff,
and
Defendant.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the [judge of the County Court holden at] and to [*name of plaintiff*] of greeting.

Whereas we have been given to understand that you the said have [entered a plaint against] C. D. in the said court, and that the said court has no jurisdiction in the said [cause] or to hear and determine the said [plaint] by reason that [*state facts showing want of jurisdiction*].

We therefore hereby prohibit you from further proceeding in the said [action] in the said court.

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of in the year of our Lord one thousand eight hundred and

This writ was issued by of agent for of solicitor for the who reside at

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### 11. *Commission to examine Witnesses.*

In the High Court of Justice.
Division.

18 . No.

Between Plaintiff,
and
Defendant.

Victoria, by the grace of God of the United Kingdom of Great Britain

and Ireland Queen, Defender of the Faith, to of and of commissioners named by and on behalf of the and to of and of commissioners named by and on behalf of the greeting: Know ye that we in confidence of your prudence and fidelity have appointed you and by these presents give you power and authority to examine on interrogatories and *vivâ voce* as hereinafter mentioned witnesses on behalf of the said and respectively at before you or any two of you, so that one commissioner only on each side be present and act at the examination.—And we command you as follows:

1. Both the said and the said shall be at liberty to examine on interrogatories and *vivâ voce* on the subject-matter thereof or arising out of the answers thereto such witnesses as shall be produced on their behalf with liberty to the other party to cross-examine the said witnesses on cross-interrogatories and *vivâ voce* on the subject-matters thereof or arising out of the answers thereto, the party producing any witness for examination being at liberty to re-examine him *vivâ voce;* and all such additional *vivâ voce* questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and with the answers thereto shall be returned with the said commission.

2. Not less than days before the examination of any witness on behalf of either of the said parties, notice in writing, signed by any one of you, the commissioners of the party on whose behalf the witness is to be examined, and stating the time and place of the intended examination and the names of the witnesses to be examined, shall be given to the commissioners of the other party by delivering the notice to them, or by leaving it at their usual place of abode or business, and if the commissioners or commissioner of that party neglect to attend pursuant to the notice, then one of you, the commissioners of the party on whose behalf the notice is given, shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte,* and adjourn any meeting or meetings, or continue the same from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

3. In the event of any witness on his examination, cross-examination, or re-examination producing any book, document, letter, paper, or writing, and refusing for good cause to be stated in his deposition to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioners or commissioner present and acting to be a true and correct copy or extract shall be annexed to the witnesses' deposition.

4. Each witness to be examined under this commission shall be examined on oath, affirmation, or otherwise in accordance with his religion by or before the commissioners or commissioner present at the examination.

5. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *vivâ voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters to be nominated by the commissioners or commissioner present at the examination, and to be previously sworn according to his or their several religions by or before the said commissioners or commissioner truly to interpret the questions to be put to the witness and his answers thereto.

6. The depositions to be taken under this commission shall be subscribed by the witness or witnesses, and by the commissioners or commissioner who shall have taken the depositions.

7. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the senior master of the Supreme Court

of Judicature on or before the day of enclosed in a cover under the seals or seal of the commissioners or commissioner.

8. Before you or any of you, in any manner act in the execution hereof you shall severally take the oath hereon indorsed on the Holy Evangelists or otherwise in such other manner as is sanctioned by the form of your several religions and is considered by you respectively to be binding on your respective consciences.

And we give you or any one of you authority to administer such oath to the other or others of you.

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of , in the year of our Lord one thousand eight hundred and .

This writ was issued by of agent for of solicitor for the who reside at .

*Witnesses' Oath.*

You are true answer to make to all such questions as shall be asked you, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth. So help you God.

*Commissioners' Oath.*

You shall, according to the best of your skill and knowledge, truly and faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission within written. So help you God.

*Interpreters' Oath.*

You shall truly and faithfully, and without partiality to any or either of the parties in this cause, and to the best of your ability, interpret and translate the oath or oaths, affirmation or affirmations which he shall administer to, and all and every the questions which shall be exhibited or put to, all and every witness and witnesses produced before and examined by the commissioners named in the commission within written, as far forth as you are directed and employed by the said commissioners, to interpret and translate the same out of the English into the language of such witness or witnesses, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language. So help you God.

*Clerk's Oath.*

You shall truly, faithfully and without partiality to any or either of the parties in this cause, take, write down, transcribe and engross all and every the questions which shall be exhibited or put to all and every witness and witnesses, and also the depositions of all and every such witness and witnesses produced before and examined by the said commissioners named in the commission within written, as far forth as you are directed and employed by the commissioners to take, write down, transcribe or engross the said questions and depositions. So help you God.

Direction of Interrogatories, &c. when returned by the commissioners.

The Senior Master of the Supreme Court of Judicature, Royal Courts of Justice, London.

## 12. *Habeas Corpus ad Testificandum.*

In the High Court of Justice.
Division. 18 . No. .

Between Plaintiff,
and
Defendant.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the [keeper of our prison at] .

We command you that you bring , who it is said is detained in our prison under your custody , before at on day the day of at the hour of in the noon, and so from day to day until the above action is tried, to give evidence on behalf of the And that immediately after the said shall have so given his evidence you safely conduct him to the prison from which he shall have been brought.

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of in the year of our Lord one thousand eight hundred and .

This writ was issued by of agent for of solicitor for the who reside at .

# APPENDIX (H).

[*** Added by R. S. C., April, 1880.]

## Summonses and Orders.

### 1. *Summons (General Form).*

In the High Court of Justice.
Division. 18 No.
Between Plaintiff,
and
Defendant.

Let all parties concerned attend the judge [*or* master] in chambers on day the day of 18 at o'clock in the noon, on the hearing of an application on the part of
Dated the day of 18
This summons was taken out by of solicitor for
To

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### 2. *Order (General Form).*

In the High Court of Justice.
Division. 18 No.
*Judge [*or* Master] in Chambers.
Between Plaintiff,
and
Defendant.

* Insert name of judge or master.

Upon hearing and upon reading the affidavit of filed the day of 18 and
It is ordered and that the costs of this application be
Dated the day of 18

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### 3. *Order for Time.*

In the High Court of Justice.
Division. 18 No.
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of filed the day of 18 and
It is ordered that the shall have time and that the costs of this application be
Dated the day of 18

---

### 4. *Order under Order XIV., No.* 1.

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of filed the day of , 18 and

It is ordered that the plaintiff may sign final judgment in this action for the amount indorsed on the writ, with interest, if any, and costs to be taxed, and that the costs of this application be

Dated the day of 18 .

---

### 5. *Order under Order XIV., No.* 2.

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that the defendant be at liberty to defend this action by delivering a statement of defence within days after delivery of the plaintiff's statement of claim, and that the costs of this application be .

Dated the day of 18 .

---

### 6. *Order under Order XIV., No.* 3.

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that if the defendant pay into court within a week from the date of this order the sum of £ , he be at liberty to defend this action by delivering a statement of defence within days after delivery of the plaintiff's statement of claim, but that if that sum be not so paid the plaintiff be at liberty to sign final judgment for the amount indorsed on the writ of summons, with interest, if any, and costs, and that in either event the costs of this application be .

Dated the day of 18 .

---

### 7. *Order under Order XIV., No. 4.*

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that if the defendant pay into court within a week from the date of this order the sum of £ , he be at liberty to defend this action as to the whole of the plaintiff's claim.

And it is ordered that if that sum be not so paid the plaintiff be at liberty to sign judgment for that sum and the defendant be at liberty to defend this action as to the residue of the plaintiff's claim.

And it is ordered that in either event the statement of defence be delivered within days after delivery of the plaintiff's statement of claim, and that the costs of this application be .

Dated the day of 18 .

---

### 8. *Order to Amend.*

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that the plaintiff be at liberty to amend the writ of summons in this action by and that the costs of this application be .

Dated the day of 18 .

---

### 9. *Order for Particulars (Partnership).*

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that the furnish the with a statement in writing, verified by affidavit, setting forth the names of the persons constituting the members or co-partners of their firm, pursuant to the Rules of the Supreme Court Order XVI., Rule 10, and that the costs of this application be

Dated the day of 18 .

---

10. *Order for Particulars (General).*

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of filed the day of 18 , and
It is ordered that the plaintiff deliver to the defendant an account in writing of the particulars of the plaintiff's claim in this action, and that unless such particulars be delivered within days from the date of this order all further proceedings be stayed until the delivery thereof, and that the costs of this application be
Dated the day of 18 .

---

11. *Order for Particulars (Accident Case).*

In the High Court of Justice.
Division. 18 . No.
Masters in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of filed the day of 18 , and
It is ordered that the plaintiff deliver to the defendant an account in writing of the particulars of the injuries and expenses mentioned in the statement of claim, together with the time and place of the accident, number of the , and the particular acts of negligence complained of, and that unless such particulars be delivered within days from the date of this order all further proceedings in this action be stayed until the delivery thereof, and that the costs of this application be .
Dated the day of 18 .

---

12. *Order to discharge or vary on Application by Third Party.*

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of filed the day of 18 , and
It is ordered that the order of in this action dated the day of 18 be discharged [*or* varied by ], and the costs of this application be .
Dated the day of 18 .

---

### 13. *Order to dismiss for want of Prosecution.*

In the High Court of Justice.
Division. 18 No.
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of filed the day of 18 and

It is ordered that this action be, for want of prosecution, dismissed with costs to be taxed and paid to the defendant by the plaintiff, and that the costs of this application be

Dated the day of 18

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### 14. *Order for Delivery of Interrogatories.*

In the High Court of Justice.
Division. 18 No.
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of filed the day of 18 and

It is ordered that the be at liberty to deliver to the interrogatories in writing, and that the said do, within days from the date of this order, answer the interrogatories in writing by affidavit, and that the costs of this application be

Dated the day of 18

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### 15. *Order for Affidavit as to Documents.*

In the High Court of Justice.
Division. 18 No.
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing

It is ordered that the do, within days from the date of this order, answer on affidavit stating what documents are or have been in possession or power relating to the matters in question in this action, and that the costs of this application be

Dated the day of 18

---

### 16. *Order to produce Documents for Inspection.*

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of filed the day of 18 and

It is ordered that the do, at all seasonable times, on reasonable notice, produce at the office of solicitor, situate at the following documents, namely and that the be at liberty to inspect and peruse the documents so produced, and to take copies and abstracts thereof and extracts therefrom, at expense, and that in the meantime all further proceedings be stayed, and that the costs of this application be .

Dated the day of 18

---

### 17. *Order for Production (Underwriters).*

In the High Court of Justice.
Division. 18 . No. .
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that the do produce and show to the upon oath all insurance slips, policies, letters of instruction or other orders for effecting such slips or policies, or relating to the insurance or the subject-matter of the insurance on the ship or the cargo on board thereof, or the freight thereby, and also all documents relating to the sailing or alleged loss of the said ship the cargo on board thereof and the freight thereby, and all letters and correspondence with any person or persons in any manner relating to the effecting the insurance on the said ship, the cargo on board thereof, or the freight thereby, or any other insurance whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the voyage insured by, or relating to the policy sued upon in this action, or any other policy whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the same voyage. Also all correspondence between the captain or agent of the vessel and any other person, with the owner or any person or persons previous to the commencement of or during the voyage upon which the alleged loss happened. Also all protests, surveys, log books, charter-parties, tradesmen's bills for repairs, average statements, letters, invoices, bills of parcels, bills of lading, manifests, accounts, accounts-current, accounts-sales, bills of exchange, receipts, vouchers, books, documents, correspondence papers and writings (whether originals, duplicates or copies respectively), which now are in the custody, possession or power of the his brokers, solicitors or agents in any way relating or referring to the matters in question in this action, with liberty for the to inspect and take copies of or extracts from the same or any of them, and that in the meantime all further proceedings be stayed, and that the costs of this application be .

Dated the day of 18 .

### 18. *Order for Service out of Jurisdiction.*

In the High Court of Justice.
Division. 18 . No. .
Judge in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of filed the day of 18 , and
It is ordered that the plaintiff be at liberty to issue a writ for service out of the jurisdiction against .
And it is further ordered that the time for appearance to the said writ be within days after the service thereof, and that the costs of this application be .
Dated the day of 18 .

---

### 19. *Order for Substituted Service.*

In the High Court of Justice.
Division. 18 . No. .
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of filed the day of 18 , and .
It is ordered that service of a copy of this order, and of a copy of the writ of summons in this action, by sending the same by a pre-paid post letter, addressed to the defendant at shall be good and sufficient service of the writ.
Dated the day of 18 .

---

### 20. *Order for Renewal of Writ.*

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of filed the day of 18 , and
It is ordered that the writ in this action be renewed for six months from the date of its renewal, pursuant to the Rules of the Supreme Court Order VIII., Rule 1.
Dated the day of 18 .

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21. *Order for Issue of Notice claiming Contribution.*

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that the defendant be at liberty to issue a notice claiming over against , pursuant to the Rules of the Supreme Court Order XVI., Rule 18.

Dated the day of 18 .

---

22. *Order of Reference.*

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between , Plaintiff,
and
Defendant.

Upon hearing and by consent it is ordered as follows:

1. [*State matters to be referred*] shall be referred to the award of

2. The arbitrator shall have all the powers as to certifying and amending of a judge of the High Court of Justice.

3. The arbitrator shall make and publish his award in writing of and concerning the matters referred, ready to be delivered to the parties in difference, or such of them as require the same (or their respective personal representatives, if either of the said parties die before the making of the award) on or before the next, or on or before such further day as the arbitrator may from time to time appoint and signify in writing signed by him and indorsed on this order.

4. The said parties shall in all things abide by and obey the award so to be made.

5. The costs of the said cause and the costs of the reference and award shall be

6. The arbitrator may (if he think fit) examine the said parties to this action, and their respective witnesses, upon oath or affirmation.

7. The said parties shall produce before the arbitrator all books, deeds, papers, and writings in their or either of their custody or power relating to the matters in difference.

8. Neither the plaintiff nor the defendant shall bring or prosecute any action against the arbitrator of or concerning the matters so to be referred.

9. If either party by affected delay or otherwise wilfully prevent the said arbitrator from making an award, he or they shall pay such costs to the other as may think reasonable and just.

10. In the event of either of the said parties disputing the validity of the said award, or moving the to set it aside, the said shall have power to remit the matters hereby referred or any or either of them to the reconsideration of the arbitrator.

11. In the event of the arbitrator declining to act or dying before he has made his award, the said parties may, or if they cannot agree, one of the Masters of the Supreme Court of Judicature may, on application by either side, appoint a new arbitrator.

12. Unless restrained by any order of the High Court of Justice, or of any judge thereof, the party or parties in whose favour the award shall

be made shall be at liberty within days after service of a copy of the award on the solicitor or agent of the other party to sign final judgment in accordance with the award, and for all costs that he or they may be entitled to under this order, and under the award, together with the costs of the said judgment.

Dated the day of 18 .

---

23. *Order for Examination of Witnesses before Arbitrator.*

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that attend before the arbitrator herein on the days of 18 , at and then and there submit to be examined on oath or affirmation on behalf of the touching the matters referred to the said arbitrator.

Dated the day of 18 .

---

24. *Order for Examination of Witnesses and Production of Documents.*

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that attend before the arbitrator herein on the days of 18 , at , and then and there submit to be examined on oath or affirmation on behalf of the touching the matters referred to the said arbitrator.

And it is further ordered that the said do at the time and place aforesaid produce and deliver to the said arbitrator the papers, documents, and writings hereafter mentioned, that is to say,*

Dated the day of 18 .

* Specify documents to be produced.

---

25. *Order charging Stock—Nisi.*

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of filed the day of 18 , whereby it appears

It is ordered that unless sufficient cause be shown to the contrary before on day the day of 18 , at o'clock in the forenoon, the defendant's interest in the so standing as aforesaid shall, and that it in the meantime do, stand charged with the payment of the above-mentioned amount due on the said judgment.

Dated the day of 18 .

---

### 26. *Order charging Stock—Absolute.*

In the High Court of Justice.

Division. 18 . No.

Judge in Chambers.

Between Plaintiff,

and

Defendant.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and an order nisi made herein on the day of 18 , reciting the affidavit of , whereby it appeared .

It is ordered that the defendant's interest in the so standing as aforesaid stand charged with the payment of the above-mentioned amount due on the said judgment.

Dated the day of 18 .

---

### 27. *Charging Order. Solicitor's Costs.*

In the High Court of Justice.

Division. No.

Judge in Chambers.

Between Plaintiff,

and

Defendant.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and .

It is ordered that the said the solicitor for the in this action shall have a charge upon for his costs, charges, and expenses of and in reference to this action.

Dated the day of 18 .

---

### 28. *Order to remove Judgment from County Court.*

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

In the matter of a plaint in the county court of holden at wherein plaintiff, and defendant.

Upon reading the affidavit of filed the day of 18 , and and the certified copy of the judgment in the plaint above mentioned.

It is ordered that a writ of certiorari issue to remove the said judgment from the above-named county court into the Division of the High Court of Justice.

Dated the day of 18 .

### 29. *Order for Arrest (Capias) under Debtors Act.*

In the High Court of Justice.
Division. 18 . No.
Judge in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and :

It is ordered that the defendant be arrested and imprisoned for the term of from the date of his arrest, including the day of such date, unless and until he shall sooner deposit in court the sum of £ , or give to the plaintiff a bond executed by him and two sufficient sureties in the penalty of £ , or some other security satisfactory to the plaintiff, that .

And it is further ordered that the sheriff of do within one calendar month from the date hereof, including the day of such date, and not afterwards, take the defendant for the purpose aforesaid, if he shall be found in the said sheriff's bailiwick.

Dated the day of 18 .

---

### 30. *Commission to examine Witnesses.*

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered as follows:

1. A commission may issue directed to of and commissioners named by and on behalf of the and to of and of commissioners named by and on behalf of the for the examination upon interrogatories and *vivâ voce* of witnesses on behalf of the said and respectively at aforesaid before the said commissioners, or any two of them, so that one commissioner only on each side be present and act at the examination.

2. Both the said and shall be at liberty to examine upon interrogatories and *vivâ voce* upon the subject-matter thereof or arising out of the answers thereto such witnesses as may be produced on their behalf, with liberty to the other party to cross-examine the said witnesses upon cross-interrogatories and *vivâ voce* on the subject-matters thereof or arising out of the answers thereto, the party producing the witness for examination being at liberty to re-examine him *vivâ voce;* and all such additional *vivâ voce* questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and, with the answers thereto, returned with the said commission.

3. Within days from the date of this order, the solicitors or agents of the said and shall exchange the interrogatories they propose to administer to their respective witnesses, and shall also within days from the exchange of such interrogatories, exchange copies of the cross-interrogatories intended to be administered to the said witnesses.

4. days previously to the sending out of the said commission, the solicitor of the said shall give to the solicitor of the said

notice in writing of the mail or other conveyance by which the commission is to be sent out.

5. days previously to the examination of any witness on behalf of the said or respectively, notice in writing signed by any one of the commissioners of the party on whose behalf the witness is to be examined and stating the time and place of the intended examination, and the names of the witnesses intended to be examined, shall be given to the commissioners of the other party by delivering the notice to them personally, or by leaving it at their usual place of abode or business, and if the commissioners of that party neglect to attend pursuant to the notice, then one of the commissioners of the party on whose behalf the notice is given shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte*, and adjourn any meeting or meetings, or continue the same, from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

6. In the event of any witness on his examination, cross-examination, or re-examination producing any book, document, letter, paper, or writing, and refusing for good cause to be stated in his deposition, to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioners or commissioner present to be a true and correct copy or extract, shall be annexed to the witnesses' deposition.

7. Each witness to be examined under the commission shall be examined on oath, affirmation, or otherwise in accordance with his religion by or before the said commissioners or commissioner.

8. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *vivâ voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters, to be nominated by the commissioners or commissioner, and to be previously sworn according to his or their several religions by or before the said commissioners or commissioner truly to interpret the questions to be put to the witness or witnesses, and his and their answers thereto.

9. The depositions to be taken under and by virtue of the said commission shall be subscribed by the witness or witnesses, and by the commissioners or commissioner who shall have taken such depositions.

10. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the senior master of the Supreme Court of Judicature on or before the day of , or such further or other day as may be ordered, enclosed in a cover under the seal or seals of the said commissioners or commissioner, and office copies thereof may be given in evidence on the trial of this action by and on behalf of the said and respectively, saving all just exceptions, without any other proof of the absence from this country of the witness or witnesses therein named, than an affidavit of the solicitor or agent of the said or respectively, as to his belief of the

11. The trial of this cause is to be stayed until the return of the said commission.

12. The costs of this order, and of the commission to be issued in pursuance hereof, and of the interrogatories, cross-interrogatories, and depositions to be taken thereunder, together with any such document, copy, or extract as aforesaid, and official copies thereof, and all other costs incidental thereto, shall be

Dated the day of 18 .

31. *Order of Reference under s. 56 of the Judicature Act*, 1873.

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of , filed the day of 18 , and

It is ordered that the following question arising in this action, namely, be referred for inquiry and report to under section 56 of the Judicature Act, 1873, and that the costs of this application be

Dated the day of 18 .

---

32. *Order of Reference under s. 57 of the Judicature Act*, 1873.

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that the [*state whether all or some, and if so which, of the questions are to be tried*] in this action be tried by who shall have all the powers as to certifying and amending of a judge of the High Court of Justice, and shall make his report of and concerning the matters ordered to be tried as aforesaid pursuant to the statute.

And it is further ordered that the said referee may, if he think fit, examine the parties to this action, and their respective witnesses, upon oath or affirmation, and that the said parties shall produce before the said referee all books, deeds, papers, and writings in their or either of their custody or power relating to the matters so ordered to be tried.

And it is further ordered that neither the plaintiff nor the defendant shall bring or prosecute any action against the said referee, or against each other, of or concerning the matters so ordered to be tried, and that if either party by affected delay or otherwise wilfully prevent the said referee from making his report, he or they shall pay such costs to the other as the High Court, or any judge thereof, may think reasonable and just.

And it is further ordered, that in the event of the said referee declining to act, or dying before he has made his report, the said parties may, or if they cannot agree, one of the judges of the High Court may, upon application by either party, appoint a new referee.

And it is ordered that the costs of this application be

Dated the day of 18

---

33. *Order of Reference to Master.*

In the High Court of Justice.
Division. 18 . No. .
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing , and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that this action [*or* the matters of account in this action, *or* the following questions in this action being matters of account, namely, *stating them*] be referred to the certificate of one of the masters of the Supreme Court of Judicature, with all the powers as to certifying and amending of a judge of the High Court of Justice, and that the costs of the and of the reference be in the discretion of the master, and that the costs of this application be .

Dated the day of 18 .

---

34. *Order for Examination of Witnesses before Trial.*

In the High Court of Justice.

Division. 18 . No. .

Master in Chambers.

Between Plaintiff,

and

Defendant.

Upon hearing , and upon reading the affidavit of , filed the day of , 18 , and .

It is ordered that , a witness on behalf of the , be examined *viva voce* (on oath or affirmation) before one of the masters of the Supreme Court of Judicature [*or* before , esquire, special examiner], the solicitor or agent giving to the solicitor or agent notice in writing of the time and place where the examination is to take place.

And it is further ordered that the examination so taken be filed in the Central Office of the Supreme Court of Judicature, and that an office copy or copies thereof may be read and given in evidence on the trial of this cause, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the solicitor or agent of the as to his belief, and that the costs of this application be .

Dated the day of , 18 .

---

35. *Order for Issue of Commission to examine Witnesses.*

In the High Court of Justice.

Division. 18 . No. .

Master in Chambers.

Between Plaintiff,

and

Defendant.

Upon hearing , and upon reading the affidavit of , filed the day of , 18 , and .

It is ordered that the be at liberty to issue a commission for the examination of witnesses on behalf at .

And it is further ordered that the trial of this action be stayed until the return of the said commission, the usual long order to be drawn up, and unless agreed upon by the parties within one week, to be settled by a master, and that the costs of this application be .

Dated the day of , 18 .

---

### 36. *Order for Examination of Judgment Debtor.*

In the High Court of Justice.
Division. 18 . No. .
Master in Chambers.
Between Judgment Creditor,
and
Judgment Debtor.

Upon hearing , and upon reading the affidavit of , filed the day of , 18 , and .

It is ordered that the above-named judgment debtor attend and be orally examined as to whether any and what debts are owing to him, before the master in chambers, at such time and place as he may appoint, and that the said judgment debtor produce his [books*] before the said master at the time of the examination, and that the costs of this application be

Dated the day of 18

* Or as may be ordered.

---

### 37. *Garnishee Order (Attaching Debt).*

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between Judgment Creditor,
and
Judgment Debtor,
Garnishee.

Upon hearing and upon reading the affidavit of filed the day of 18 and

It is ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court of Justice on the day of 18 for the sum of £ on which judgment the said sum of £ remains due and unpaid.

And it is further ordered that the said garnishee attend the master in chambers on day the day of 18 at o'clock in the noon, on an application by the said judgment creditor, that the said garnishee pay the debt due from him to the said judgment debtor, or so much thereof as may be sufficient to satisfy the judgment.

And that the costs of this application be

Dated the day of 18

---

### 38. *Garnishee Order (Absolute).*

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between Judgment Creditor,
and
Judgment Debtor,
Garnishee.

Upon hearing and upon reading the affidavit of filed the day of 18 and .

whereby it was ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor should be attached to answer a judgment recovered against the said judgment

debtor by the above-named judgment creditor in the High Court of Justice on the day of 18 for the sum of £ on which judgment the said sum of £ remained due and unpaid,

It is ordered that the said garnishee do forthwith pay the said judgment creditor the debt due from him to the said judgment debtor (or so much thereof as may be sufficient to satisfy the judgment debt), and that in default thereof execution may issue for the same, and that the costs of this application be

Dated the day of 18

---

39. *Order on Client's Application to tax Solicitor's Bill of Costs.*

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.

In the matter of gentleman, one of the solicitors of the Supreme Court.

Upon the application of [hereinafter called "the applicant"]

It is ordered that the bill of fees, charges, and disbursements delivered to the applicant by the above-named solicitor be referred to the master to be taxed, and that the said solicitor give credit for all sums of money by him received of or on account of the applicant, and that he refund what, if anything, he may on such taxation appear to have been overpaid.

And it is further ordered that if the said solicitor attends on the taxation, the Master tax the costs of the reference, and certify what shall be found due to or from either party in respect of the bill and demand and of the costs of the reference, to be charged (if payable) according to the event of the taxation, pursuant to the statute.

And it is further ordered that the said solicitor do not commence or prosecute any action or suit touching the demand pending the reference.

And it is further ordered that upon payment by the applicant of what (if anything) may appear to be due to the said solicitor the said solicitor do (if required) deliver up to the applicant, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody, or power, belonging to the applicant.

And it is ordered that the costs of this application be .

Dated the day of 18 .

---

40. *Order on Solicitor's Application to tax Bill of Costs.*

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.

In the matter of gentleman, one of the solicitors of the Supreme Court.

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that the above-named solicitor's bill of fees, charges, and disbursements, delivered to (hereinafter called the said client) be referred to the Master to be taxed, and that the said solicitor give credit for all sums of money by him received from or on account of the said client, and that he refund what, if anything, he may on such taxation appear to have been overpaid.

And it is further ordered that the Master tax the costs of the reference

and certify what shall be found due to or from either party in respect of the bill and demand and of the costs of the reference, to be paid according to the event of the taxation pursuant to the statute.

And it is further ordered that the said solicitor do not commence or prosecute any action or suit touching the demand pending the reference.

And it is further ordered that upon payment by the said client of what (if anything) may appear to be due to the said solicitor the said solicitor do (if required) deliver to the said client or as he may direct all deeds, books, papers, and writings in the said solicitor's possession, custody, or power, belonging to the said client.

And it is ordered that the costs of this application be .

Dated the day of 18 .

---

### 41. *Order to tax after Action brought.*

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between Plaintiff,

and

Defendant.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that the plaintiff's bill of costs, charges, and disbursements delivered to the defendant, for the recovery of which this action is brought, be referred to the Master to be taxed, and that the plaintiff give credit at the time of taxation for all sums of money by him received from or on account of the defendant.

And it is further ordered that the Master tax the costs of the reference, and certify what upon such reference shall be found due to or from either party in respect of the bill and demand, and of the costs of the reference, pursuant to the statute.

And it is further ordered that the plaintiff do not prosecute this action touching the demand pending the reference.

And it is further ordered that upon payment of what (if anything) may appear to be due to the plaintiff, together with the costs of this action (which are to be also taxed and paid), all further proceedings therein be stayed, and that the costs of this application be .

Dated the day of 18 .

---

### 42. *Order to try Action in County Court.*

In the High Court of Justice.

Division. 18 . No. .

Master in Chambers.

Between Plaintiff,

and

Defendant.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that this action be tried before the county court of holden at , and that the costs of this application be

Dated the day of 18 .

---

43. *Order to give Security or try Action in County Court.*

In the High Court of Justice.
Division. 18 . No. .
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that unless the plaintiff within give full security for the defendant's costs to the satisfaction of one of the masters of the Supreme Court of Judicature, this cause be remitted for trial before the county court of holden at and that the costs of this application be

Dated the day of 18 .

---

44. *Order for Examination touching Means.*

In the High Court of Justice.
Division.
Judge in Chambers.
Between Judgment Creditor,
and
Judgment Debtor.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that the above-named do attend before the judge in chambers on the day of next, at in the noon, to be examined upon oath touching his means of paying the judgment debt, and that the costs of this application be

Dated the day of 18 .

---

45. *Order for Payment of Judgment Debt by Instalments.*

In the High Court of Justice.
Division.
Judge in Chambers.
Between Judgment Creditor,
and
Judgment Debtor.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that the above-named judgment debtor do pay to the above-named judgment creditor the sum of £ , together with interest thereon at the rate of £4 per centum per annum from the day of 18 , the date of the judgment, and also £ the costs of this application in manner following; namely, [*here describe the mode in which the payment is to be made*].

Dated the day of 18 .

---

### 46. *Order for Committal of Judgment Debtor.*

In the High Court of Justice.
Division.
Judge in Chambers.
Between Judgment Creditor,
and
Judgment Debtor.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that the above-named judgment debtor be, for default in payment of the debt hereinafter mentioned, committed to prison for the term of from the date of his arrest, including the day of such date, or until he shall pay £ , being the amount due from him in pursuance of a judgment [*or* order] of the High Court of Justice, bearing date the day of 18 , together with interest thereon at 4*l.* per cent. per annum from the aforesaid date, and 1*l.* 6*s.* 8*d.* for costs of this order, and the sheriff's fees for the execution thereof.

And it is further ordered that the sheriff take the said debtor for the purpose aforesaid if he is found within his bailiwick.

And it is ordered that the costs of this application be

Dated the day of 18 .

---

### 47. *Order for Committal of Judgment Debtor on Non-payment of Instalment.*

In the High Court of Justice.
Division.
Judge in Chambers.
Between Judgment Creditor,
and
Judgment Debtor.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that the above-named judgment debtor be for default in payment of £ , being the amount of the [*first*] instalment of the judgment debt of £ in this action directed to be paid pursuant to the order of bearing date the day of 18 , committed to prison for the term of from the date of his arrest, including the day of such date, or until he shall pay the said instalment together with 13*s.* 4*d.* the costs of this order, and sheriff's fees for the execution thereof. And it is further ordered that the sheriff of take the said debtor for the purpose aforesaid if he is found in his bailiwick.

And it is ordered that the costs of this application be

Dated the day of 18 .

---

### 48. *Interpleader Order No.* 1.

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between Plaintiff,
and
Defendant,
and between
Claimant,
and
Respondent.

Upon hearing , and upon reading the affidavit of , filed the day of 18 , and

It is ordered that the claimant be barred, that no action be brought against the above-named [sheriff] , and that the costs of this application be

Dated the day of 18 .

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## 49. *Interpleader Order, No. 2.*

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between Plaintiff,

and

Defendant,

and

Claimant.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that the above-named claimant be substituted as defendant in this action in lieu of the present defendant, and that the costs of this application be

Dated the day of 18 .

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## 50. *Interpleader Order, No. 3.*

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between Plaintiff,

and

Defendant,

and between

Claimant,

and the said execution creditor, and the sheriff of Respondents.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that the said sheriff proceed to sell the goods seized by him under the writ of fieri facias issued herein, and pay the net proceeds of the sale, after deducting the expenses thereof, into court in this cause, to abide further order herein.

And it is further ordered that the parties proceed to the trial of an issue in the High Court of Justice, in which the said claimant shall be the plaintiff and the said execution creditor shall be the defendant, and that the question to be tried shall be whether at the time of the seizure by the sheriff the goods seized were the property of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within from this date, and be returned by the defendant therein within days, and be tried at

And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue, and that no action shall be brought against the said sheriff for the seizure of the said goods.

Dated the day of 18 .

### 51. *Interpleader Order, No.* 4.

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between Plaintiff,
and
Defendant,
and between
Claimant,
and the said execution creditor, and the sheriff of
Respondents.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that upon payment of the sum of £ into court by the said claimant within from this date, or upon his giving within the same time security to the satisfaction of one of the masters of the Supreme Court for the payment of the same amount by the said claimant according to the directions of any order to be made herein, and upon payment to the above-named sheriff of the possession money from this date, the said sheriff do withdraw from the possession of the goods seized by him under the writ of fieri facias herein.

And it is further ordered that unless such payment be made or security given within the time aforesaid the said sheriff proceed to sell the said goods, and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into court in the cause, to abide further order herein.

And it is further ordered that the parties proceed to the trial of an issue in the High Court of Justice, in which the claimant shall be plaintiff and the execution creditor shall be defendant, and that the question to be tried shall be whether at the time of the seizure by the sheriff the goods seized were the property of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within from this date, and be returned by the defendant therein within days, and be tried at

And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue, and that no action shall be brought against the sheriff for the seizure of the said goods.

Dated the day of 18 .

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### 52. *Interpleader Order, No.* 5.

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between Plaintiff,
and
Defendant,
and between
Claimant,
and the said execution creditor and the sheriff of
Respondents.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that upon payment of the sum of £ into court by

the said claimant, or upon his giving security to the satisfaction of one of the Masters of the Supreme Court for the payment of the same amount by the claimant according to the directions of any order to be made herein, the above-named sheriff withdraw from the possession of the goods seized by him under the writ of fieri facias issued herein.

And it is further ordered that in the meantime, and until such payment made or security given, the sheriff continue in possession of the goods, and the claimant pay possession money for the time he so continues, unless the claimant desire the goods to be sold by the sheriff, in which case the sheriff is to sell them and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into court in the cause, to abide further order herein.

And it is further ordered that the parties proceed to the trial of an issue in the High Court of Justice, in which the claimant shall be plaintiff and the execution creditor shall be defendant, and that the question to be tried shall be whether at the time of the seizure by the sheriff the goods seized were the property of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within from this date, and be returned by the defendant therein within days, and be tried at

And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue, and that no action shall be brought against the sheriff for the seizure of the said goods.

Dated the day of 18 .

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## 53. *Interpleader Order, No. 6.*

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between Plaintiff,

and

Defendant,

and between

Claimant,

and the said execution creditor and the sheriff of Respondents.

The claimant and the execution creditor having requested and consented that the merits of the claim made by the claimant be disposed of and determined in a summary manner, now upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that

And that the costs of this application be

Dated the day of 18 .

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### 54. *Interpleader Order, No. 7.*

In the High Court of Justice.
Division. 18 . No. .
Master in Chambers.
Between Plaintiff,
and
Defendant,
and between
Claimant,
and the said execution creditor and the sheriff of
Respondents.

Upon hearing , and upon reading the affidavit of , filed the day of , 18 , and .

It is ordered that the above-named sheriff proceed to sell enough of the goods seized under the writ of fieri facias issued in this action to satisfy the expenses of the said sale, the rent (if any) due, the claim of the claimant, and this execution.

And it is further ordered that out of the proceeds of the said sale, (after deducting the expenses thereof, and rent, if any,) the said sheriff pay to the claimant the amount of his said claim, and to the execution creditor the amount of his execution, and the residue, if any, to the defendant.

And it is further ordered that no action be brought against the said sheriff, and that the costs of this application be .

Dated the day of , 18 .

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### 55. *Order dismissing Summons (generally).*

In the High Court of Justice.
Division. 18 . No. .
Master in Chambers.
Between Plaintiff,
and
Defendant.

Upon hearing , and upon reading the affidavit of , filed the day of , 18 , and .

It is ordered that the application of be dismissed * with costs to be taxed and paid by the to the .

Dated the day of , 18 .

* If the dismissal is with costs add these words.

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### 56. *Summons for Entry of Satisfaction on a Registered Bill of Sale.*

In the High Court of Justice.

In the matter of a bill of sale by to , dated the day of , 18 , and registered on the day of , 18 .

Let all parties concerned attend the Registrar of Bills of Sale at the Central Office, Royal Courts of Justice, London, on the day of , 18 , at o'clock in the noon, on the hearing of an application on the part of , that satisfaction be entered on the above-mentioned bill of sale.

Dated the day of , 18 .

This summons was taken out by , of .

To .

# ORDERS IN COUNCIL.

## I.

## ADDITIONAL RULES OF COURT.

[*** *These Rules may be cited as Rules of the Supreme Court (Costs). See R. S. C., Dec.* 1875, *Rule* 1, *p.* 555, *post.*]

At the Court at Osborne House, Isle of Wight, the 12th day of August, 1875.

Present: The Queen's Most Excellent Majesty in Council.

Whereas by an act passed in the present session of parliament intituled "An Act to amend and extend the Supreme Court of Judicature Act, 1873," it is enacted* that her Majesty may, at any time after the passing and before the commencement of the said act, by order in council, made upon the recommendation of the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and the Lords Justices of Appeal in Chancery or any five of them and the other judges of the several courts intended to be united and consolidated by the said principal act as amended by the said act, or of a majority of such other judges, make any further or additional rules of court for carrying the said principal act and the said act into effect, and in particular for all or any of the following matters, so far as they are not provided for by the rules in the first schedule to the said act; that is to say, (1) for regulating the sittings of the High Court of Justice and the Court of Appeal, and of any divisional or other courts thereof respectively, and of the judges of the said High Court sitting in chambers; and (2) for regulating the pleadings, practice and procedure in the High Court of Justice and Court of Appeal; and (3) generally for regulating any matters relating to the practice and procedure of the said courts respectively, or to the duties of the officers thereof or of the Supreme Court or to the costs of proceedings therein:

* Sect. 17, p. 77.

Now therefore her Majesty, in pursuance of the said act, and by and with the advice of her Privy Council, and upon

Issue of additional rules of court.

*R. S. C. (Costs.)*

the recommendation of the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer and the Lords Justices of Appeal in Chancery, and a majority of the other judges of the several courts intended to be united and consolidated by the said principal act as amended by the said act, is pleased to make and issue the additional rules of court following for the purposes aforesaid.

C. L. PEEL.

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ADDITIONAL RULES OF COURT UNDER THE SUPREME COURT OF JUDICATURE ACT, 1875.

ORDER I.

Printing of depositions.

Where any written deposition of a witness has been filed for use on a trial, such deposition shall be printed, unless otherwise ordered.

ORDER II.

The rules of court as to printing depositions and affidavits to be used on a trial shall not apply to depositions and affidavits which have previously been used upon any proceeding without having been printed.

ORDER III.

Printing of affidavits.

* Page 219.

Other affidavits than those required to be printed by Order XXXVIII., Rule 6,* in the schedule to the Supreme Court of Judicature Act, 1875, may be printed if all the parties interested consent thereto, or the court or judge so order.

ORDER IV.

*Special case.*

† *Page* 198.

[*The 3rd Rule*† *of the Order XXXIV., in the first schedule to the Supreme Court of Judicature Act*, 1875, *shall apply to a special case, pursuant to the Act of* 13 *&* 14 *Vict. c.* 33 (*a*). *Annulled*—See *infra.*]

ORDER IVA.

Special case.

64. Order IV. of the additional rules of the Supreme Court (Costs) is hereby annulled (*b*).

ORDER V.

Regulations as to office copies of pleading, &c.

Where, pursuant to rules of court, any pleading, special case, petition of right, deposition, or affidavit is to be printed,

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(*a*) *Sic.* 13 & 14 Vict. c. 35, is evidently meant.

(*b*) Added by R. S. C., April, 1880, Rule 64, the special case under 13 & 14 Vict. c. 35, being abolished by Ord. XXXIV., Rule 7.

and where any printed or other office copy thereof is to be taken, the following regulations shall be observed:—

1. The party on whose behalf the deposition or affidavit is taken and filed is to print the same in the manner provided by Rule 2* of Order LVI. in the first schedule to the Supreme Court of Judicature Act, 1875. Printing. * Page 253.
2. To enable the party printing to print any deposition, the officer with whom it is filed shall on demand deliver to such party a copy written on draft paper on one side only.
3. The party printing shall, on demand in writing, furnish to any other party or his solicitor any number of printed copies, not exceeding ten, upon payment therefor at the rate of 1*d.* per folio for one copy, and ½*d.* per folio for every other copy. Supply of printed copies. Payment.
4. The solicitor of the party printing shall give credit for the whole amount payable by any other party for printed copies.
5. The party entitled to be furnished with a print shall not be allowed any charge in respect of a written copy, unless the court or judge shall otherwise direct. No charge for written copy.
6. The party by or on whose behalf any deposition, affidavit, or certificate is filed, shall leave a copy with the officer with whom the same is filed, who shall examine it with the original and mark it as an office copy; such copy shall be a copy printed as above provided where such deposition or affidavit is to be printed. Marking of office copy.
7. The party or solicitor who has taken any printed or written office copy of any deposition or affidavit is to produce the same upon every proceeding to which the same relates. Production of office copy.
8. Where any party is entitled to a copy of any deposition, affidavit, proceeding or document filed or prepared by or on behalf of another party, which is not required to be printed, such copy shall be furnished by the party by or on whose behalf the same has been filed or prepared. Written copy, by whom to be furnished.
9. The party requiring any such copy, or his solicitor, is to make a written application to the party by whom the copy is to be furnished, or his solicitor, with an undertaking to pay the proper charges, and thereupon such copy is to be made and ready to be delivered at the expiration of twenty-four hours after the receipt of such request and undertaking, or within such other time as the court or judge may in any case direct, and is to be furnished accordingly upon demand and payment of the proper charges. Application for written copy.
10. In the case of an *ex parte* application for an injunction or writ of *ne exeat regno*, the party making such Injunction, or *ne exeat regno*.

*R. S. C.* (*Costs.*)

Copies of affidavits.

application is to furnish copies of the affidavits upon which it is granted upon payment of the proper charges immediately upon the receipt of such written request and undertaking as aforesaid, or within such time as may be specified in such request, or may have been directed by the court.

Note as to on whose behalf affidavit is filed.

11. It shall be stated in a note at the foot of every affidavit filed on whose behalf it is so filed, and such note shall be printed on every printed copy of an affidavit or set of affidavits, and copied on every office copy and copy furnished to a party.

Indorsement upon copy of name, &c. of solicitor.

12. The name and address of the party or solicitor by whom any copy is furnished is to be indorsed thereon in like manner as upon proceedings in court, and such party or solicitor is to be answerable for the same being a true copy of the original, or of an office copy of the original, of which it purports to be a copy, as the case may be.

Folios to be numbered consecutively.

13. The folios of all printed and written office copies, and copies delivered or furnished to a party, shall be numbered consecutively in the margin thereof, and such written copies shall be written in a neat and legible manner on the same paper as in the case of printed copies.

Neglect to furnish written copy.

14. In case any party or solicitor who shall be required to furnish any such written copy as aforesaid shall either refuse or, for twenty-four hours from the time when the application for such copy has been made, neglect to furnish the same, the person by whom such application shall be made shall be at liberty to procure an office copy from the office in which the original shall have been filed, and in such case no costs shall be due or payable to the solicitor so making default in respect of the copy or copies so applied for.

Expense of printing when ordered by court.

15. Where, by any order of the court (whether of appeal or otherwise), or a judge, any pleading, evidence, or other document is ordered to be printed, the court or judge may order the expense of printing to be borne and allowed, and printed copies to be furnished by and to such parties and upon such terms as shall be thought fit.

## ORDER VI.

Costs.

The following regulations as to costs of proceedings in the Supreme Court of Judicature shall regulate such costs from the commencement of the Supreme Court of Judicature Acts, 1873 and 1875:—

"Lower scale."

1. Solicitors shall be entitled to charge and be allowed the fees set forth in the column headed "lower scale" in the schedule hereto—

In all actions for purposes to which any of the forms of indorsement of claims on writs of summons in Sections II.,* IV.† and VII.,‡ in Part II. of Appendix A., referred to in the 3rd Rule§ of Order III., in the schedule to the Supreme Court of Judicature Act, 1875, or other similar forms, are applicable (except as after provided in actions for injunctions);

* Page 288.
† Page 290.
‡ Page 295.
§ Page 126.

In all causes and matters by the 34th‖ section of the Supreme Court of Judicature Act, 1873, assigned to the Queen's Bench Division of the Court; Queen's Bench, &c. Division.

‖ Page 33.

In all causes and matters by the 34th section of the said act assigned to the Common Pleas Division of the Court;

In all causes and matters by the 34th section of the said act assigned to the Exchequer Division of the court;

In all causes and matters by the 34th section of the said act assigned to the Probate, Divorce, and Admiralty Division of the court; Probate, &c. Division.

And also in causes and matters by the 34th section of the said act assigned to the Chancery Division of the court in the following cases (that is to say):— Chancery Division.

1. By creditors, legatees (whether specific, pecuniary, or residuary), devisees (whether in trust or otherwise), heirs-at-law or next of kin, in which the personal or real or personal and real estate for or against or in respect of which or for an account or administration of which the demand may be made, shall be under the amount or value of 1,000*l.*
2. For the execution of trusts or appointment of new trustees in which the trust estate or fund shall be under the amount or value of 1,000*l.*
3. For dissolution of partnership or the taking of partnership or any other accounts in which the partnership assets or the estate or fund shall be under the amount or value of 1,000*l.*
4. For foreclosure or redemption, or for enforcing any charge or lien in which the mortgage whereon the suit is founded, or the charge or lien sought to be enforced, shall be under the amount or value of 1,000*l.*
5. And for specific performance in which the purchase-money or consideration shall be under the amount or value of 1,000*l.*
6. In all proceedings under the Trustees Relief Acts, or under the Trustees Acts, or under any of such acts, in which the trust estate or fund to which the proceeding relates shall be under the amount or value of 1,000*l.*
7. In all proceedings relating to the guardianship or maintenance of infants, in which the property of the infant shall be under the amount or value of 1,000*l.*
8. In all proceedings by original special case, and in all

*R. S. C.* (*Costs.*)

proceedings relating to funds carried to separate accounts, and in all proceedings under any railway or private act of parliament, or under any other statutory or summary jurisdiction, and generally in all other cases where the estate or fund to be dealt with shall be under the amount or value of 1,000*l.*

The forms of indorsements of writs mentioned in this rule are:—Sect. 2, indorsements of money claims in contract; sect. 4, of claims for damages; and sect. 7, special indorsements under Ord. II., Rule 6.

Should the scale provided for the cases specified in this rule prove inadequate, it must be borne in mind that Rule 3, *post*, can be brought to bear to prevent injustice.

The normal rule for most of the actions, &c., which will come before divisions other than the Chancery Division, gives no larger allowance than that given in the lower scale, however large may be the sum in dispute, although the excess of such sum over 1,000*l.* is made in most of the matters assigned to the Chancery Division a test for judging whether the higher scale should be allowed.

As to estimate of value in administration action in Chancery Division where the estate administered is an equity of redemption, see *Sanderson, In re*, 7 Ch. D. 176; and for instance of action in Chancery Division against executors being held to be an action for damages only and not one of the matters "assigned" to that division, see *Rogers* v. *Jones*, 7 Ch. D. 345.

"Higher scale."

2. Solicitors shall be entitled to charge and be allowed the fees set forth in the column headed "higher scale" in the schedule hereto; in all actions for special injunctions to restrain the commission or continuance of waste, nuisances, breaches of covenant, injuries to property and infringement of rights, easements, patents and copyrights, and other similar cases where the procuring such injunction is the principal relief sought to be obtained, and in all cases other than those to which the fees in the column headed "lower scale" are hereby made applicable.

See *Chapman* v. *Midland Rail. Co.*, 5 Q. B. D. 167, for instance of costs on higher scale being refused upon grant of injunction against trespass where no question of title was raised, or permanent damage caused.

3. Notwithstanding these rules, the court or judge may in any case direct the fees set forth in either of the said two columns to be allowed to all or either or any of the parties, and as to all or any part of the costs.

See *Pooley* v. *Driver*, 7 Ch. D. 494, per Jessel, M. R., for instance of costs on higher scale being given in action on a bill of exchange in Chancery Division in a very special case.

This rule applies to all the divisions of the High Court. *Norfolk* v. *Arbuthnot*, 29 W. R. 337.

* Page 273.

4. The provisions of Order LXIII.,* in the first schedule to the Supreme Court of Judicature Act, 1875, shall apply to these rules.

## THE SCHEDULE ABOVE REFERRED TO.

An Order or Rule herein referred to by number shall mean the Order or Rule so numbered in the First Schedule to the Supreme Court of Judicature Act, 1875.

### WRITS, SUMMONSES, AND WARRANTS.

| | Lower Scale. £ | s. | d. | Higher Scale. £ | s. | d. |
|---|---|---|---|---|---|---|
| Writ of summons for the commencement of any action | 0 | 6 | 8 | 0 | 13 | 4 |
| And for endorsement of claim, if special | 0 | 5 | 0 | 0 | 5 | 0 |
| Concurrent writ of summons | 0 | 6 | 8 | 0 | 6 | 8 |
| Renewal of a writ of summons | 0 | 6 | 8 | 0 | 6 | 8 |
| Notice of a writ for service in lieu of writ out of jurisdiction | 0 | 4 | 0 | 0 | 5 | 0 |
| Writ of inquiry | 1 | 1 | 0 | 1 | 1 | 0 |
| Writ of mandamus or injunction | 0 | 10 | 0 | 1 | 1 | 0 |
| Or per folio | 0 | 1 | 4 | 0 | 1 | 4 |
| Writ of subpœna ad testificandum duces tecum | 0 | 6 | 8 | 0 | 6 | 8 |
| And if more than four folios, for each folio beyond four | 0 | 1 | 4 | 0 | 1 | 4 |
| Writ or writs of subpœna ad testificandum for any number of persons not exceeding three, and the same for every additional number not exceeding three | 0 | 6 | 8 | 0 | 6 | 8 |
| Writ of distringas, pursuant to stat. 5 Vict. c. 8 (*c*) | 0 | 13 | 4 | 0 | 13 | 4 |
| Writ of execution, or other writ to enforce any judgment or order | 0 | 7 | 0 | 0 | 10 | 0 |
| And if for more than four folios, for each folio beyond four | 0 | 1 | 4 | 0 | 1 | 4 |
| Procuring a writ of execution or notice to the sheriff, marked with a seal of renewal | 0 | 6 | 8 | 0 | 6 | 8 |
| Notice thereof to serve on sheriff | 0 | 4 | 0 | 0 | 5 | 0 |
| Any writ not included in the above<br>These fees include all endorsements and copies, or præcipes, for the officer sealing them, and attendances to issue or seal, but not the court fees. | 0 | 7 | 0 | 0 | 10 | 0 |
| Summons to attend at judges' chambers (*d*) | 0 | 3 | 0 | 0 | 6 | 8 |
| Or if special, at taxing officer's discretion, not exceeding | 0 | 6 | 8 | 1 | 1 | 0 |
| Copy for the judge, when required | 0 | 2 | 0 | 0 | 2 | 0 |
| Or per folio | | — | | 0 | 0 | 4 |
| Original summons for proceedings in chambers in the Chancery Division | 0 | 13 | 4 | 1 | 0 | 0 |
| And attending to get same and duplicate sealed, and at the proper office to file duplicate and get copies for service stamped | 0 | 13 | 4 | 0 | 13 | 4 |
| Copy for the judge | 0 | 2 | 0 | 0 | 2 | 0 |

(*c*) *Sic.* See Order XLVI., Rule 2, and note, p. 234.

(*d*) The fee in this and the next eight items does not include court fees. (Per Lindley, J., at chambers, Bitt. p. 97.)

*R. S. C.* (*Costs.*)

| | Lower Scale. £ | s. | d. | Higher Scale. £ | s. | d. |
|---|---|---|---|---|---|---|
| Or per folio | — | | | 0 | 0 | 4 |
| Endorsing same and copies under 8th rule of the 35th of the Consolidated General Orders of the Court of Chancery | 0 | 6 | 8 | 0 | 6 | 8 |

## SERVICES, NOTICES, AND DEMANDS.

| | | | | | | |
|---|---|---|---|---|---|---|
| Service of any writ, summons, warrant, interrogatories, petition, order, notice or demand, on a party who has not entered an appearance, and if not authorized to be served by post | 0 | 5 | 0 | 0 | 5 | 0 |
| If served at a distance of more than two miles from the nearest place of business, or office of the solicitor serving the same, for each mile beyond such two miles therefrom | 0 | 1 | 0 | 0 | 1 | 0 |
| Where, in consequence of the distance of the party to be served, it is proper to effect such service through an agent (other than the London agent), for correspondence in addition | 0 | 7 | 0 | 0 | 7 | 0 |
| Where more than one attendance is necessary to effect service, or to ground an application for substituted service, such further allowance may be made as the taxing officer shall think fit. | | | | | | |
| For service out of the jurisdiction such allowance is to be made as the taxing officer shall think fit. | | | | | | |
| Service where an appearance has been entered on the solicitor or party | 0 | 2 | 6 | 0 | 2 | 6 |
| Or if authorized to be served by post | 0 | 1 | 6 | 0 | 1 | 6 |
| Where any writ, order and notice, or any two of them, have to be served together, one fee only for service is to be allowed. | | | | | | |
| In addition to the above fees, the following allowances are to be made :— | | | | | | |
| As to writs, if exceeding two folios, for copy for service, per folio, beyond such two | 0 | 0 | 4 | 0 | 0 | 4 |
| As to summons to attend at the judges' chambers, for each copy to serve | 0 | 1 | 0 | 0 | 2 | 0 |
| Or per folio | 0 | 0 | 4 | 0 | 0 | 4 |
| As to notice in proceedings to wind up companies, for preparing, or filling up each notice to creditors to attend and receive debts, and to contributories to settle list of contributories | 0 | 1 | 0 | 0 | 1 | 0 |
| And for preparing or filling up each notice to contributories to be served with a general order for a call, or an order for payment of a call | 0 | 1 | 0 | 0 | 1 | 0 |
| And for drawing notice to be served on contributories or creditors of a meeting, per folio | 0 | 1 | 0 | 0 | 1 | 0 |

| | Lower Scale. £ | s. | d. | Higher Scale. £ | s. | d. | *R. S. C. (Costs.)* |
|---|---|---|---|---|---|---|---|
| For each copy of the last-mentioned notice to serve, per folio | 0 | 0 | 4 | 0 | 0 | 4 | |
| For preparing or filling up for service in any other cause or matter, each notice to creditors to prove claims, and each notice that cheques may be received, specifying the amount to be received for principal and interest, and costs, if any | 0 | 1 | 0 | 0 | 1 | 0 | |
| For preparing notice to produce or admit, and one copy | 0 | 5 | 0 | 0 | 7 | 6 | |
| If special, or necessarily long, such allowance as the taxing officer shall think proper, not exceeding per folio | 0 | 0 | 8 | 0 | 1 | 4 | |
| And for each copy beyond the first, such allowance as the taxing master shall think proper, not exceeding per folio | 0 | 0 | 4 | 0 | 0 | 4 | |
| For preparing notice of motion | 0 | 2 | 0 | 0 | 5 | 0 | |
| Or per folio | 0 | 1 | 0 | 0 | 1 | 0 | |
| Copy for service | 0 | 1 | 0 | 0 | 1 | 0 | |
| Or per folio | | — | | 0 | 0 | 4 | |
| For preparing any necessary or proper notice, not otherwise provided for and demand | 0 | 1 | 6 | 0 | 1 | 6 | |
| Or if special, and necessarily exceeding three folios, for preparing same, for each folio beyond three | 0 | 1 | 0 | 0 | 1 | 0 | |
| And for each copy for service, per folio beyond such three | 0 | 0 | 4 | 0 | 0 | 4 | |
| Copies for service of interrogatories and petitions, and of orders with necessary notices (if any) to accompany, per folio | 0 | 0 | 4 | 0 | 0 | 4 | |
| Except as otherwise provided, the allowances for services include copies for service. | | | | | | | |
| Where notice of filing affidavits is required, only one notice is to be allowed for a set of affidavits filed, or which ought to be filed together. | | | | | | | |
| In proceedings to wind up a company, the usual charges relating to printing shall be allowed in lieu of copies for service, where the fee for copies would exceed the charges for printing, and amount to more than 3*l*. | | | | | | | |
| Where any appointment is or ought to be adjourned, service of a notice of the adjournment, or next appointment, is not to be allowed. | | | | | | | |
| APPEARANCES. | | | | | | | |
| Entering any appearance | 0 | 6 | 8 | 0 | 6 | 8 | |
| If entered at one time, for more than one person, for every defendant beyond the first | 0 | 1 | 0 | 0 | 2 | 0 | |
| If a person appearing to a writ of summons to recover land limits his defence by his memorandum of appearance, in addition to the above | 0 | 6 | 8 | 0 | 6 | 8 | |

*R. S. C.* (*Costs.*)

## INSTRUCTIONS.

| | Lower Scale. £ | s. | d. | Higher Scale. £ | s. | d. |
|---|---|---|---|---|---|---|
| To sue or defend | 0 | 6 | 8 | 0 | 13 | 4 |
| For statement of complaint | 0 | 13 | 4 | 2 | 2 | 0 |
| For statement or further statement of defence | 0 | 6 | 8 | 0 | 13 | 4 |
| For counter-claim | 0 | 6 | 8 | 0 | 13 | 4 |
| For reply by plaintiff when defendant sets up a counter-claim | 0 | 13 | 4 | 1 | 1 | 0 |
| For reply or further reply in any other case by plaintiff or other person, with or without joinder of issue | 0 | 6 | 8 | 0 | 13 | 4 |
| For confession of defence | 0 | 6 | 8 | 0 | 13 | 4 |
| For joinder of issue without other matter and for demurrer | 0 | 6 | 8 | 0 | 13 | 4 |
| For special case, special petition, any other pleading (not being a summons), and interrogatories for examination of a party or witness | 0 | 6 | 8 | 0 | 13 | 4 |
| To amend any pleading | 0 | 6 | 8 | 0 | 13 | 4 |
| For affidavit in answer to interrogatories, and other special affidavits | 0 | 6 | 8 | 0 | 6 | 8 |
| To appeal | 0 | 13 | 4 | 1 | 1 | 0 |
| To add parties by order of court or judge | 0 | 6 | 8 | 0 | 13 | 4 |
| For counsel to advise on evidence when the evidence in chief is to be taken orally | 0 | 6 | 8 | 0 | 6 | 8 |
| Or not to exceed | 0 | 13 | 4 | 1 | 1 | 0 |
| For counsel to make any application to a court or judge where no other brief | 0 | 6 | 8 | 0 | 10 | 0 |
| For brief on motion for special injunction | 0 | 13 | 4 | 1 | 1 | 0 |
| For brief on hearing or trial of action upon notice of trial given, whether such trial be before a judge, with or without a jury, or before an official or special referee, or on trial of an issue of fact before a judge, commissioner or referee, or on assessment of damages | 1 | 1 | 0 | 2 | 2 | 0 |
| For such brief, and for brief on the hearing of an appeal when witnesses are to be examined or cross-examined, such fee may be allowed as the taxing officer shall think fit, having regard to all the circumstances of the case, and to other allowances, if any, for attendances on witnesses and procuring evidence. | | | | | | |
| The fees for instructions for brief are not to apply to a hearing on further consideration. | | | | | | |

## DRAWING PLEADINGS AND OTHER DOCUMENTS.

| | | | | | | |
|---|---|---|---|---|---|---|
| Statement of claim | 0 | 10 | 0 | 1 | 1 | 0 |
| Or per folio | 0 | 1 | 0 | 0 | 1 | 0 |
| Statement of defence | 0 | 5 | 0 | 0 | 10 | 0 |
| Or per folio | 0 | 1 | 0 | 0 | 1 | 0 |
| Statement of defence and counter-claim | 0 | 5 | 0 | 1 | 1 | 0 |
| Or per folio | 0 | 1 | 0 | 0 | 1 | 0 |

| | Lower Scale. £ s. d. | Higher Scale. £ s. d. | *R. S. C.* (*Costs.*) |
|---|---|---|---|
| Reply, with or without joinder of issue, confession of defence, joinder of issue without other matter, demurrer, and any other pleading (not being a petition or summons) and amendments of any pleading - - | 0 5 0 | 0 10 0 | |
| Or per folio - - - - - - - | 0 1 0 | 0 1 0 | |
| Particulars, breaches, and objections, when required, and one copy to deliver - - | 0 5 0 | 0 6 8 | |
| Or such amount as the taxing officer shall think fit, not exceeding per folio - - | 0 0 8 | 0 1 4 | |
| If more than one copy to be delivered, for each other copy per folio - - - - | 0 0 4 | 0 0 4 | |
| Special case, whether original or in action, affidavits in answer to interrogatories and other special affidavits, special petitions, and interrogatories, per folio - - - | 0 1 0 | 0 1 0 | |
| Brief, on trial or hearing of cause, issue of fact, assessment of damages, examination of witnesses, demurrer, special case and petition before a court or judge, sheriff, commissioner, referee, examiner, or officer of the court, when necessary and proper in addition to pleadings, including necessary and proper observations, per folio - | 0 1 0 | 0 1 0 | |
| Brief on application to add parties - - | 0 6 8 | 0 10 0 | |
| Or per folio - - - - - - - | 0 1 0 | 0 1 0 | |
| Brief on further consideration, per sheet of 10 folios - - - - - - - - | 0 6 8 | 0 6 8 | |
| Accounts, statements, and other documents for the judges' chambers, when required, and fair copy to leave, per folio- - - | 0 0 8 | 0 1 4 | |
| Advertisements to be signed by judge's clerk, including attendance therefor - - - | 0 6 8 | 0 13 4 | |
| Bill of costs for taxation, including copy for the taxing officer - - - - - - | 0 0 8 | 0 0 8 | |
| **COPIES.** | | | |
| Of pleadings, briefs, and other documents where no other provision is made, at per folio - - - - - - - - - | 0 0 4 | 0 0 4 | |
| Where, pursuant to rules of court, any pleading, special case or petition of right, or evidence is printed, the solicitor of the party printing shall be allowed for a copy for the printer (except when made by the officer of the court), at per folio - - | 0 0 4 | 0 0 4 | |
| And for examining the proof print, at per folio - - - - - - - - - | 0 0 2 | 0 0 2 | |
| *And for printing a document not exceeding 10 folios - - - - - - - - - | 0 10 0 | 0 10 0 | |

* These items are altered from their original form and amount by R. S. C., June, 1876, Rule 20.

*R. S. C.* (*Costs.*)

| | Lower Scale. £ s. d. | Higher Scale. £ s. d. |
|---|---|---|
| *And in addition for every 20 beyond the first 20 copies of any document not exceeding 24 folios - - - - - - - - - | 0 2 0 | 0 2 0 |
| And where any part shall properly be printed in a foreign language, or as a fac-simile, or in any unusual or special manner, or where any alteration in the document being printed becomes necessary after the first proof, such further allowance shall be made as the taxing officer shall think reasonable. | | |
| These allowances are to include all attendances on the printer. | | |
| The solicitor for a party entitled to take printed copies shall be allowed, for such number of copies as he shall necessarily or properly take, the amount he shall pay therefor. | | |
| In addition to the allowances for printing and taking printed copies, there shall be allowed for such printed copies as may be necessary or proper for the following, but for no other purposes (videlicet):— | | |
| Of any pleading for delivery to the opposite party, or filing in default of appearance - | | |
| Of any special case for filing - - - - | | |
| Of any petition of right for presentation, if presented in print, and for the solicitor of the treasury, and service on any party - | | |
| Of any pleading, special case or petition of right, for the use of the court or judge - | | |
| Of any affidavit to be sworn to in print - - | | |
| And of any pleading, special case, petition of right or evidence for the use of counsel in court, and in country agency causes when proper to be sent as a close copy for the use of the country solicitor, at per folio - - | 0 0 2 | 0 0 3 |
| Such additional allowances for printed copies for the court or judge, and for counsel, are not to be made where written copies have been made previously to printing, and are not in any case to be made more than once in the progress of the cause. | | |
| Close copies, whether printed or written, are not to be allowed as of course, but the allowance is to depend on the propriety of making or sending the copies, which in each case is to be shown and considered by the taxing officer. | | |
| Inserting amendments in a printed copy of any pleading, special case or petition of right, when not reprinted - - - - | 0 1 0 | 0 5 0 |
| Or per folio - - - - - - | 0 0 4 | 0 0 4 |

* These items are altered from their original form and amount by R. S. C., June, 1876, Rule 20.

| PERUSALS. | Lower Scale. £ s. d. | Higher Scale. £ s. d. | *R. S. C.* (*Costs.*) |
|---|---|---|---|
| Of statement of complaint, statement of defence, reply, joinder of issue, demurrer and other pleading (not being a petition or summons) by the solicitor of the party to whom the same are delivered | 0 6 8 | 0 13 4 | |
| Or per folio | — | 0 0 4 | |
| Of amendment of any such pleading in writing | 0 6 8 | 0 6 8 | |
| Or per folio | — | 0 0 4 | |
| If same reprinted | 0 6 8 | 0 13 4 | |
| Or per folio of amendment | — | 0 0 4 | |
| Of interrogatories to be answered by a party by his solicitor | 0 6 8 | 0 13 4 | |
| Or per folio | — | 0 0 4 | |
| Of special case by the solicitor of any party except the one by whom it is prepared | 0 6 8 | 0 13 4 | |
| Or per folio | — | 0 0 4 | |
| Of copy order to add parties, notice of defendant's claim against any person not a party to the action under Order XVI., Rule 18,* and of defendant's statement of defence and counter-claim served on a person not a party under Order XXII., Rule 6,† by the solicitor of the party served therewith, and in these several cases the perusal of the plaintiff's statement of complaint is also to be allowed unless the solicitor has been previously allowed such perusal | 0 6 8 | 0 13 4 | * Page 159. † Page 176. |
| Or per folio | — | 0 0 4 | |
| Of notice to produce and notice to admit by the solicitor of the party served | 0 6 8 | 0 13 4 | |
| Of affidavit in answer to interrogatories by the solicitor of the party interrogating, and of other special affidavits by the solicitor of the party against whom the same can be read, per folio | 0 0 4 | 0 0 4 | |

| ATTENDANCES. | | | |
|---|---|---|---|
| To obtain consent of next friend to sue in his name | 0 6 8 | 0 13 4 | |
| To deliver or file any pleading (not being a petition or summons) and a special case | 0 3 4 | 0 6 8 | |
| To inspect, or produce for inspection, documents pursuant to a notice to admit | 0 6 8 | 0 13 4 | |
| Or per hour | 0 6 8 | 0 6 8 | |
| To examine and sign admissions | 0 6 8 | 0 13 4 | |
| To inspect, or produce for inspection, documents referred to in any pleading or affidavit, pursuant to notice under Order XXXI., Rule 14‡ | 0 6 8 | 0 6 8 | ‡ Page 194. |
| Or per hour | 0 6 8 | 0 6 8 | |

*R. S. C.* (*Costs.*)

| | Lower Scale. £ | s. | d. | Higher Scale. £ | s. | d. |
|---|---|---|---|---|---|---|
| To obtain or give any necessary or proper consent | 0 | 6 | 8 | 0 | 6 | 8 |
| To obtain an appointment to examine witnesses | 0 | 6 | 8 | 0 | 6 | 8 |
| On examination of witnesses before any examiner, commissioner, officer or other person | 0 | 13 | 4 | 0 | 13 | 4 |
| Or according to circumstances, not to exceed | 2 | 2 | 0 | 2 | 2 | 0 |
| Or if without counsel, not to exceed | | — | | 3 | 3 | 0 |
| On deponents being sworn, or by a solicitor or his clerk to be sworn, to an affidavit in answer to interrogatories or other special affidavit | 0 | 6 | 8 | 0 | 6 | 8 |
| On a summons at judges' chambers | 0 | 6 | 8 | 0 | 6 | 8 |
| Or according to circumstances, not to exceed | 1 | 1 | 0 | 1 | 1 | 0 |
| In the Chancery Division, all allowances for attending at the judges' chambers are to be by the judge or chief clerk as heretofore. | | | | | | |
| To file chief clerks' and taxing masters' certificates, and get copy marked as an office copy | 0 | 6 | 8 | 0 | 6 | 8 |
| On counsel with brief or other papers— | | | | | | |
| If counsel's fee one guinea | 0 | 3 | 4 | 0 | 6 | 8 |
| If more and under five guineas | 0 | 6 | 8 | 0 | 6 | 8 |
| If five guineas and under 20 guineas | 0 | 6 | 8 | 0 | 13 | 4 |
| If 20 guineas | 0 | 13 | 4 | 1 | 1 | 0 |
| If 40 guineas or more | | — | | 2 | 2 | 0 |
| On consultation or conference with counsel | 0 | 13 | 4 | 0 | 13 | 4 |
| To enter or set down action, demurrer, special case, or appeal, for hearing or trial | 0 | 6 | 8 | 0 | 6 | 8 |
| In court on motion of course and on counsel and for order | 0 | 10 | 0 | 0 | 13 | 4 |
| To present petition for order of course and for order | 0 | 6 | 8 | 0 | 13 | 4 |
| In court on every special motion each day | 0 | 6 | 8 | 0 | 13 | 4 |
| On same when heard each day | 0 | 13 | 4 | 0 | 13 | 4 |
| Or according to circumstances | 1 | 1 | 0 | 2 | 2 | 0 |
| On demurrer, special case, or special petition, or application adjourned from the judges' chambers, when in the special paper for the day, or likely to be heard | 0 | 6 | 8 | 0 | 10 | 0 |
| On same when heard | 0 | 13 | 4 | 1 | 1 | 0 |
| Or according to circumstances, not to exceed | 1 | 1 | 0 | 2 | 2 | 0 |
| On hearing or trial of any cause, or matter, or issue of fact, in London or Middlesex, or the town where the solicitor resides or carries on business, whether before a judge with or without a jury, or commissioner, or referee, or on assessment of damages, when in the paper | 0 | 10 | 0 | 0 | 10 | 0 |
| When heard or tried | 0 | 13 | 4 | 1 | 1 | 0 |
| Or according to circumstances | 2 | 2 | 0 | 2 | 2 | 0 |
| When not in London or Middlesex, nor in the town where the solicitor resides or carries on business, for each day (except Sundays) he is necessarily absent | 2 | 2 | 0 | 3 | 3 | 0 |

| | Lower Scale. £ | s. | d. | Higher Scale. £ | s. | d. | *R. S. C. (Costs.)* |
|---|---|---|---|---|---|---|---|
| And expenses (besides actual reasonable travelling expenses) each day, including Sundays | 1 | 1 | 0 | 1 | 1 | 0 | |
| Or if the solicitor has to attend on more than one trial or assessment at the same time and place, in each case | 1 | 1 | 0 | 1 | 11 | 6 | |
| The expenses in such case to be rateably divided. | | | | | | | |
| To hear judgment when same adjourned | 0 | 6 | 8 | 0 | 13 | 4 | |
| Or according to circumstances | 0 | 13 | 4 | 1 | 1 | 0 | |
| To deliver papers (when required) for the use of a judge prior to a hearing | 0 | 6 | 8 | 0 | 6 | 8 | |
| If more than one judge | 0 | 13 | 4 | 0 | 13 | 4 | |
| On taxation of a bill of costs | 0 | 6 | 8 | 0 | 6 | 8 | |
| Or according to circumstances, not to exceed | 2 | 2 | 0 | 2 | 2 | 0 | |
| In causes for purposes within the cognizance of the Court of Chancery before the act passed, such further fee as the taxing officer may think fit, not exceeding the allowances heretofore made. | | | | | | | |
| To obtain or give an undertaking to appear | 0 | 6 | 8 | 0 | 6 | 8 | |
| To present a special petition, and for same answered | 0 | 6 | 8 | 0 | 6 | 8 | |
| On printer to insert advertisement in Gazette | 0 | 6 | 8 | 0 | 6 | 8 | |
| On printer to insert same in other papers, each printer | | — | | 0 | 6 | 8 | |
| Or every two | 0 | 6 | 8 | | — | | |
| On registrar to certify that a cause set down is settled, or for any reason not to come into the paper for hearing | 0 | 6 | 8 | 0 | 6 | 8 | |
| For an order drawn up by chief clerk, and to get same entered | 0 | 6 | 8 | 0 | 6 | 8 | |
| On counsel to procure certificate that cause proper to be heard as a short cause, and on registrar to mark same | 0 | 6 | 8 | 0 | 6 | 8 | |
| To mark conveyancing counsel or taxing master | 0 | 6 | 8 | 0 | 6 | 8 | |
| For preparing and drawing up an order made at chambers in proceedings to wind up a company and attending for same, and to get same entered | 0 | 13 | 4 | 0 | 13 | 4 | |
| And for engrossing every such order, per folio | 0 | 0 | 4 | 0 | 0 | 4 | |

NOTE.—An order of course means an order made on an ex parte application, and to which a party is entitled as of right on his own statement and at his own risk.

OATHS AND EXHIBITS.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Commissioners to take oaths or affidavits. For every oath, declaration, affirmation, or attestation upon honour, in London or the country | 0 | 1 | 6 | 0 | 1 | 6 | |
| The solicitor for preparing each exhibit in town or country | 0 | 1 | 0 | 0 | 1 | 0 | |
| The commissioner for marking each exhibit | 0 | 1 | 0 | 0 | 1 | 0 | |

*R. S. C.* (*Costs.*)

TERM FEES.

| | Lower Scale. £ s. d. | Higher Scale. £ s. d. |
|---|---|---|
| For every term commencing on the day the sittings in London and Middlesex of the High Court of Justice commence, and terminating on the day preceding the next such sittings, in which a proceeding in the cause or matter by or affecting the party, other than the issuing and serving the writ of summons, shall take place - - - | 0 15 0 | 0 15 0 |
| And further, in country agency causes or matters, for letters - - - - - | 0 6 0 | 0 6 0 |
| Where no proceeding in the cause or matter is taken which carries a term fee, a charge for letters may be allowed, if the circumstances require it. | | |
| In addition to the above an allowance is to be made for the necessary expense of postages, carriage and transmission of documents. | | |

SPECIAL ALLOWANCES AND GENERAL PROVISIONS.

Specially indorsed writs, &c.

1. As to writs of summons requiring special indorsement, original special cases, pleadings and affidavits in answer to interrogatories, and other special affidavits, when the higher scale is applicable, the taxing officer may, in lieu of the allowances for instructions and preparing or drawing, make such allowance for work, labour, and expenses in or about the preparation of such documents as in his discretion he may think proper.

Fees for drawing pleading, &c.

2. As to drawing any pleading or other document, the fees allowed shall include any copy made for the use of the solicitor, agent, or client, or for counsel to settle.

Instructions from more than three persons.

3. As to instructions to sue or defend, when the higher scale is applicable, if in consequence of the instructions being taken separately from more than three persons (not being co-partners) the taxing officer shall consider the fee above provided inadequate, he may make such further allowance as he shall in his discretion onsider reasonable.

Affidavits, where several or distant deponents.

4. As to affidavits, when there are several deponents to be sworn, or it is necessary for the purpose of an affidavit being sworn to go to a distance, or to employ an agent, such reasonable allowance may be made as the taxing officer in his discretion may think fit.

Affidavit in answer to interrogatories.

5. The allowances for instructions and drawing an affidavit in answer to interrogatories and other special affidavits, and attending the deponent to be sworn, include all attendances on the deponents to settle and read over.

Same solicitor for both parties.

6. As to delivery of pleadings, services, and notices, the fees are not to be allowed when the same solicitor is for both parties, unless it be necessary for the purpose of making an affidavit of service.

7. As to perusals, the fees are not to apply where the same solicitor is for both parties.

Procuring evidence.

8. As to evidence, such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, and the attendance of witnesses, are to be allowed.

This rule, which is taken from Ch. C. O. XL., R. 32, applies to all the Divisions of the High Court, and authorizes the allowance of

the expenses of witnesses qualifying themselves for examination and scientific witnesses (*Mackley* v. *Chillingworth*, 2 C. P. D. 273; *Turnbull* v. *Janson*, 3 C. P. D. 264), which expenses were not allowed at common law; and Rule 28 does not continue the common law rule on the subject (*Turnbull* v. *Janson*, *supra*).

Agency correspondence.

9. As to agency correspondence, in country agency causes and matters, if it be shown to the satisfaction of the taxing officer that such correspondence has been special and extensive, he is to be at liberty to make such special allowance in respect thereof as in his discretion he may think proper.

Attendances at chambers.

10. As to attendances at the judges' chambers, where, from the length of the attendance, or from the difficulty of the case, the judge or master shall think the highest of the above fees an insufficient remuneration for the services performed, or where the preparation of the case or matter to lay it before the judge or master in chambers, or on a summons, shall have required skill and labour for which no fee has been allowed, the judge or master may allow such fee in lieu of the fee of 1*l.* 1*s.* above provided, not exceeding 2*l.* 2*s.*, or where the higher scale is applicable 3*l.* 3*s.*, or in proceedings to wind up a company 5*l.* 5*s.*, as in his discretion he may think fit; and where the preparation of the case or matter to lay it before a judge at chambers on a summons shall have required and received from the solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore shall appear to the judge to deserve higher remuneration than the ordinary fees, the judge may allow to the solicitor, by a memorandum in writing expressly made for that purpose and signed by the judge, specifying distinctly the grounds of such allowance, such fee, not exceeding 10*l.* 10*s.* as in his discretion he may think fit, instead of the above fees of 2*l.* 2*s.*, 3*l.* 3*s.*, and 5*l.* 5*s.*

Extraordinary fees.

Costs of failure to attend at chambers.

11. As to attendances at the judges' chambers, where by reason of the non-attendance of any party (and it is not considered expedient to proceed ex parte), or where by reason of the neglect of any party in not being prepared with any proper evidence, account, or other proceeding, the attendance is adjourned without any useful progress being made, the judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally; and the party so absent or neglectful is not to be allowed any fee as against the other party, or any estate or fund in which any other party is interested.

Folio.

12. A folio is to comprise seventy-two words, every figure comprised in a column being counted as one word.

Advice of counsel.

13. Such costs of procuring the advice of counsel on the pleadings, evidence, and proceedings in any cause or matter as the taxing officer shall in his discretion think just and reasonable, and of procuring counsel to settle such pleadings and special affidavits as the taxing officer shall in his discretion think proper to be settled by counsel, are to be allowed; but as to affidavits, a separate fee is not to be allowed for each affidavit, but one fee for all the affidavits proper to be so settled, which are or ought to be filed at the same time.

Attendance of counsel at chambers.

14. As to counsel attending judges' chambers, no costs thereof shall in any case be allowed, unless the judge certifies it to be a proper case for counsel to attend.

*R. S. C.* (*Costs.*)

15. As to the inspection of documents under Order XXXI., Rule 14,* no allowance is to be made for any notice or inspection, unless it is shown to the satisfaction of the taxing officer that there were good and sufficient reasons for giving such notice and making such inspection.

Inspection of documents.

* Page 194.

16. As to taking copies of documents in possession of another party, or extracts therefrom, under rules of court or any special order, the party entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract, as he may, by writing, require, at the rate of 4*d.* per folio; and if the solicitor of the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the party producing is not to be entitled to any fee in respect thereof.

Copies of documents in possession of another party.

17. Where a petition in any cause or matter assigned to the Chancery Division is served, and notice is given to the party served that in case of his appearance in court his costs will be objected to, and accompanied by a tender of costs for perusing the same, the amount to be tendered shall be 2*l.* 2*s.* The party making such payment shall be allowed the same in his costs, provided such service was proper, but not otherwise; but this order is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the court or judge shall consider the party entitled, notwithstanding such notice or tender, to appear in court. In any other case in which a solicitor of a party served necessarily or properly peruses any such petition without appearing thereon, he is to be allowed a fee not exceeding 2*l.* 2*s.*

Chancery Division petition.

18. The court or judge may, at the hearing of any cause or matter, or upon any application or procedure in any cause or matter in court or at chambers, and whether the same is objected to or not, direct the costs of any pleading, affidavit, evidence, notice to cross-examine witnesses, account, statement, or other proceeding, or any part thereof, which is improper, unnecessary, or contains unnecessary matter, or is of unnecessary length, to be disallowed, or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, or to contain unnecessary matter, or to be of unnecessary length; and in such case the party whose costs are so disallowed shall pay the costs occasioned to the other parties by such unnecessary proceeding, matter, or length; and in any case where such question shall not have been raised before and dealt with by the court or judge, the taxing officer may look into the same (and, as to evidence, although the same may be entered as read in any decree or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so.

Disallowance of unnecessary costs by direction of court.

For instance of direction to taxing master to look into affidavits with view of disallowing costs of affidavits unnecessarily long, see *Cracknall* v. *Janson*, 1 Ch. D. at p. 12.

The set-off is limited to costs due to either party in respect of the same action (*Barker* v. *Hemming* (C. A.), 5 Q. B. D. 609).

19. In any case in which, under the preceding rule, No. 18, or any other rule of court, or by the order or direction of a court or judge, or otherwise, a party entitled to receive costs is liable to pay

Taxation of costs, where special direction.

costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if he shall think fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such officer may allow or certify the costs to be paid, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered.

Where by award of an arbitrator in an action the plaintiff was ordered to pay a sum of money to the defendant, and the defendant was ordered to pay the plaintiff a part of his costs when taxed, it was held that the defendant was entitled to have the debt set off against the taxed costs, and that the right of set-off in such a case was not interfered with by the solicitor's lien for costs (*Pringle* v. *Gloag*, 10 Ch. D. 676; and see note to Rule 28, *post*).

Chancery Division chambers.

20. Where in the Chancery Division any question as to any costs is under the preceding Rule 18 dealt with at chambers, the chief clerk is to make a note thereof, and state the same on his allowance of the fees for attendances at chambers, or otherwise as may be convenient for the information of the taxing officer.

Costs of party not interested.

21. Where any party appears upon any application or proceeding in court or at chambers, in which he is not interested, or upon which, according to the practice of the court, he ought not to attend, he is not to be allowed any costs of such application unless the court or judge shall expressly direct such costs to be allowed.

*Costs of applications to extend time.*

22. [*As to applications to extend the time for taking any proceeding limited by rules of court (subject to any special order as to the costs of and occasioned by any such application), the costs of one application are, without special order, to be allowed as costs in the cause or matter, but (unless specially ordered) no costs are to be allowed of any further application to the party making the same as against any other party, or any estate or fund in which any other party is interested.*—Annulled, see *infra*.]

Extension of time.

22*a*. Rule 22 in the schedule to the additional rules of the Supreme Court (Costs) is hereby annulled.

The costs of an application to extend the time for taking any proceeding shall, in the absence of an order by the court or a judge directing by whom they are to be paid, be in the discretion of the taxing master (*e*).

Powers of taxing officers to administer oaths, &c.

23. The taxing officers of the Supreme Court, or of any division thereof, shall, for the purpose of any proceeding before them, have power and authority to administer oaths, and shall, in relation to the taxation of costs, perform all such duties as have heretofore been performed by any of the masters, taxing masters, registrars, or other officers of any of the courts whose jurisdiction is by the act transferred to the High Court of Justice or Court of Appeal, and shall, in respect thereof, have such powers and authorities as previous to the commencement of the act were vested in any of such officers, including examining witnesses, directing production of books, papers and documents, making separate certificates or allocaturs, requiring any party to be represented by a separate solicitor, and to direct and adopt all such other proceedings as

(*e*) Substituted for former Rule 22, by R. S. C., April, 1880, Rule 65.

*R. S. C.* (*Costs.*)

could be directed and adopted by any such officer on references for the taxation of costs, and taking accounts of what is due in respect of such costs, and such other accounts connected therewith as may be directed by the court or a judge.

Authority of taxing officer as to attendance of parties.

24. The taxing officer shall have authority to arrange and direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance such officer shall in his discretion consider unnecessary in consequence of the interest of such party in such fund or estate being small or remote, or sufficiently protected by other parties interested.

Refusal to bring in costs for taxation.

25. When any party entitled to costs refuses or neglects to bring in his costs for taxation or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer shall be at liberty to certify the costs of the other parties and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect.

Unnecessary costs not to be allowed.

26. As to costs to be paid or borne by another party, no costs are to be allowed which do not appear to the taxing officer to have been necessary or proper for the attainment of justice or defending the rights of the party, or which appear to the taxing officer to have been incurred through over-caution, negligence, or mistake, or merely at the desire of the party.

Maintenance of old fees.

27. As to any work and labour properly performed and not herein provided for, and in respect of which fees have heretofore been allowed, the same or similar fees are to be allowed for such work and labour as have heretofore been allowed.

Maintenance of old practice.

28. The rules, orders, and practice of any court whose jurisdiction is transferred to the High Court of Justice or Court of Appeal, relating to costs, and the allowance of the fees of solicitors and attorneys, and the taxation of costs, existing prior to the commencement of the act, shall, in so far as they are not inconsistent with the act, and the rules of court in pursuance thereof, remain in force and be applicable to costs of the same or analogous proceedings, and to the allowance of the fees of solicitors of the Supreme Court and the taxation of costs in the High Court of Justice and Court of Appeal.

It has been held that this rule does not incorporate R. G. H. T., Rule 63, which prohibits a set-off between parties being allowed to the prejudice of the solicitor's lien for costs (*Pringle* v. *Gloag*, 10 Ch. D. 676).

Discretionary fees and allowances.

29. As to all fees or allowances which are discretionary, the same are, unless otherwise provided, to be allowed at the discretion of the taxing officer, who, in the exercise of such discretion, is to take into consideration the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances.

Application to taxing officer to review taxation.

30. Any party who may be dissatisfied with the allowance or disallowance by the taxing officer, in any bill of costs taxed by him of the whole or any part of any item or items, may, at any time before the certificate or allocatur is signed, deliver to the other

party interested therein, and carry in before the taxing officer, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the item or items, or parts or part thereof, objected to, and may thereupon apply to the taxing officer to review the taxation in respect of the same.

Preliminary review of taxation by taxing officer.

31. Upon such application the taxing officer shall reconsider and review his taxation upon such objections, and he may, if he shall think fit, receive further evidence in respect thereof, and, if so required by either party, he shall state either in his certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto.

Application to judge for review of taxation.

32. Any party who may be dissatisfied with the certificate or allocatur of the taxing officer as to any item or part of an item which may have been objected to as aforesaid, may apply to a judge at chambers for an order to review the taxation as to the same item or part of an item, and the judge may thereupon make such order as to the judge may seem just; but the certificate or allocatur of the taxing officer shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid.

Evidence on review of taxation.

33. Such application shall be heard and determined by the judge upon the evidence which shall have been brought in before the taxing officer, and no further evidence shall be received upon the hearing thereof, unless the judge shall otherwise direct.

Fees and costs in case of issue of writ from district registry.

34. When a writ of summons for the commencement of an action shall be issued from a district, and when an action proceeds in a district registry, all fees and allowances, and rules and directions relating to costs, which would be applicable to such proceeding if the writ of summons were issued in London, and if the action proceeded in London, shall apply to such writ of summons issued from and other proceedings in the district registry.

CAIRNS, C.
A. E. COCKBURN.
G. JESSEL.
COLERIDGE.
FITZROY KELLY.
W. M. JAMES.
GEORGE MELLISH.
RICHD. MALINS.
JAMES BACON.
CHARLES HALL.
G. BRAMWELL.
COLIN BLACKBURN.
JOHN MELLOR.
ROBT. LUSH.
WM. BALIOL BRETT.
A. CLEASBY.
W. R. GROVE.
J. R. QUAIN.
JAMES HANNEN.
C. E. POLLOCK.
W. V. FIELD.
J. W. HUDDLESTON.
NATHANIEL LINDLEY.

## ORDERS IN COUNCIL.

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### II.

### DISTRICT REGISTRIES.

At the Court at Osborne House, Isle of Wight, the 12th day of August, 1875.

Present: The Queen's Most Excellent Majesty in Council.

Recital of sect. 60 of Act of 1873. (See page 48.)

WHEREAS by "The Supreme Court of Judicature Act, 1873," it is enacted that it shall be lawful for her Majesty, by order in council, from time to time to direct that there shall be district registrars in such places as shall be in such order mentioned for districts to be thereby defined, from which writs of summons for the commencement of actions in the High Court of Justice may be issued, and in which such proceedings may be taken and recorded as are hereinafter mentioned; and her Majesty may thereby appoint that any registrar of any county court, or any registrar or prothonotary or district prothonotary of any local court whose jurisdiction is hereby transferred to the said High Court of Justice, or from which an appeal is hereby given to the said Court of Appeal, or any person who, having been a district registrar of the Court of Probate, or of the Admiralty Court, shall under this act become and be a district registrar of the said High Court of Justice, or who shall hereafter be appointed such district registrar, shall and may be a district registrar of the said High Court for the purpose of issuing such writs as aforesaid, and having such proceedings taken before him as are hereinafter mentioned:

Recital of part of sect. 13 of Act of 1875. (See page 75.)

And whereas by "The Supreme Court of Judicature Act, 1875," it is provided that where any such order has been made, two persons may, if required, be appointed to perform the duties of district registrar in any district named in the order, and such persons shall be deemed to be joint district registrars, and shall perform the said duties in such manner as may from time to time be directed by the said order, or any order in council amending the same:

*District Registries.*

And whereas it has seemed fit to her Majesty, by and with the advice of her Privy Council, that there should be district registrars in certain places in England: Now, therefore, her Majesty, by and with the advice aforesaid, is pleased to order, and it is hereby ordered, as follows:—

District registrars in Liverpool, Manchester, and Preston.

That there shall be district registrars in the places of Liverpool, Manchester, and Preston, and the district registrar at Liverpool of the High Court of Admiralty, and the district prothonotary at Liverpool of the Court of Common Pleas at Lancaster, shall be and are hereby appointed the district registrars in Liverpool; and the district prothonotary at Manchester of the said Court of Common Pleas shall be and is hereby appointed the district registrar in Manchester (*a*); and the district prothonotary at Preston of the said Court of Common Pleas shall be and is hereby appointed the district registrar at Preston; and that the district for each such place shall be the district now assigned to each such district prothonotary, under the provisions and authority of "The Common Pleas at Lancaster Amendment Act, 1869."

District registrar in Durham.

That there shall be a district registrar in Durham, and that the district prothonotary of the Court of Pleas at Durham shall be and is hereby appointed the district registrar in Durham; and that the district shall be the district, for the time being of the county court holden at Durham.

District registrars generally.

Area of district.

That in the places mentioned in the schedule annexed, there shall be district registrars, and that the registrar of the county court held in any such place shall be and is hereby appointed the district registrar in such place, and that the district for each such place shall be the district, for the time being, of the county court holden at such place.

C. L. Peel.

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(*a*) See note, p. 430, *ad fin.*

[Schedule.

*District Registries.*

SCHEDULE.

| | |
|---|---|
| Bangor. | Kingston-on-Hull. |
| Barnsley. | King's Lynn. |
| Barnstaple. | Leeds. |
| Bedford. | Leicester. |
| Birkenhead. | Lincoln. |
| Birmingham. | Lowestoft. |
| Boston. | Maidstone. |
| Bradford. | Newcastle-upon-Tyne. |
| Bridgewater. | Newport, Monmouth. |
| Brighton. | Newport, Isle of Wight. |
| Bristol. | Newtown. |
| Bury St. Edmunds. | Northampton. |
| Cambridge. | Norwich. |
| Cardiff. | Nottingham. |
| Carlisle. | Oxford. |
| Carmarthen. | Pembroke Docks. |
| Cheltenham. | Peterborough. |
| Chester. | Poole. |
| Colchester. | Portsmouth. |
| Derby. | Ramsgate. |
| Dewsbury. | Rochester. |
| Dorchester | Sheffield. |
| Dover. | Shrewsbury. |
| Dudley. | Southampton. |
| East Stonehouse. | Stockton-on-Tees. |
| Exeter. | Sunderland. |
| Gloucester. | Swansea. |
| Great Grimsby. | Totnes. |
| Great Yarmouth. | Truro. |
| Halifax. | Wakefield. |
| Hanley. | Walsall. |
| Hartlepool. | Whitehaven. |
| Hereford. | Wolverhampton. |
| Huddersfield. | Worcester. |
| Ipswich. | York. |

This order may be divided into three parts (1), the establishment of district registries for the county of Lancaster; (2), for the county of Durham, and (3), for the rest of England. (1.) In the county of Lancaster there are to be three district registries. In Liverpool, the district registrar of the former High Court of Admiralty, and the district prothonotary of the former Court of Common Pleas at Lancaster, are appointed joint district registrars, as authorized by sect. 13 of the Judicature Act, 1875. That section enacts that joint district registrars are to perform their duties in such manner as may be directed, from time to time, by order in council, but the present order contains no direction on that head. It would seem intended that the joint district registrars should exercise concurrent jurisdiction within their powers, just as the several masters of the Common Law Courts did, or they may divide the business like the chief clerks of each Vice-Chancellor in Chancery. The district registrars in Manchester and Preston are to be the existing district prothonotaries, at those places, of the former Court of Common Pleas at Lancaster. The district for each place is that assigned under

*District Registries.*

the provisions of the Common Pleas at Lancaster (Amendment Act, 1869, 32 & 33 Vict. c. 37). This was done by Lord Dufferin, Chancellor of the Duchy of Lancaster, on the 23rd October, 1869, by certain rules published in the "London Gazette." The Liverpool district was directed to consist of the hundred of West Derby, the Manchester district of the hundred of Salford, and the Preston district of the hundreds of Lonsdale, Amounderness, Leyland and Blackburn. (2.) The county of Durham is to have one district registrar at Durham, who is to be the district prothonotary of the former Court of Pleas at Durham, and whose district is to be the same as that of the county court holden at Durham, as in the case of the district registries for the remainder of England. (3.) The rest of the country is to have district registries in the places named in the schedule, all of which are places where a county court is held: and the district registrars are to be the county court registrars for those places, the district of each being the district of the county court held at such place. The County Courts Act, 1846 (9 & 10 Vict. c. 95), empowered the Queen in Council to divide the whole or part of a county into districts, and to order that a county court should be held in each of such districts, and from time to time to alter them. By an order dated the 9th March, 1847, and published in the "London Gazette," the whole of England and Wales, excepting the city of London, was divided into districts. This division was based on the division of the country into districts of superintendent registrars of births, but in some cases two districts for births were made one county court district, and *vice versâ*. The districts of superintendent registrars of births are constituted pursuant to 7 Will. 4, c. 22. Additional orders in council have since been made, so that the towns where county courts are held now amount to five hundred. The seventy towns enumerated in the schedule to this order have for their districts the parishes and towns enumerated in the orders in council, from time to time made, as composing their county court district. County court registrars are supplied by the Treasury with an index of all parishes and towns, showing in what district they are; and this index may be used for the purpose of ascertaining whether a particular place is within any and what district of a district registry of the High Court.

The district prothonotary at Manchester having died, his office is abolished and a district registry instituted in its place. (Order in Council, Dec. 9th, 1876.)

# ORDERS IN COUNCIL.

## III.

## CIRCUITS.

At the Court at Osborne House, Isle of Wight, the 5th day of February, 1876.

Present: The Queen's Most Excellent Majesty in Council.

Whereas by section 23 of the Supreme Court of Judicature Act, 1875*, it is enacted that her Majesty may at any time after the passing of the act, by order in council, provide in such manner and subject to such regulations as to her Majesty may seem most meet for all or any of the matters thereinafter specified, amongst which were the discontinuance, either temporarily or permanently, wholly or partially, of any existing circuit, and the formation of any new circuit by the union of any counties or parts of counties, or partly in one way and partly in the other, or by the constitution of any county or part of a county to be a circuit by itself; and in particular the issue of commissions for the discharge of civil and criminal business in the county of Surrey, to the judges appointed to sit for the trial by jury of causes and issues in Middlesex or London, or any of them; and the appointment of the place or places at which assizes are to be holden on any circuit; and by the same section it is further enacted that in making any order thereunder her Majesty may give any directions which it appears to her Majesty to be desirable to give for the purpose of giving full effect to such order:

* Page 80.

It is therefore ordered by the Queen's most excellent Majesty, by and with the advice of her most honourable Privy Council, as follows:—

Creation of new circuits.

1. The existing circuits shall be discontinued, and instead thereof the circuits shall be those named in the first column of the schedule hereto.

2. The said circuits shall be respectively constituted as specified in the second column of the said schedule, and the places where assizes may be held shall be the places at which assizes have hitherto been held.

*Circuits.*

3. Nothing in this order shall affect the provisions of an order in council made on the 4th day of May, 1864, relating to the division of the county of Lancaster into three divisions, or the provisions of an order in council made on the 10th day of June, 1864, as amended by an order in council made on the 9th day of July, 1864, relating to the division of the county of York into two divisions. Savings.

4. The North and South Wales circuit shall be divided into two divisions, the North Wales division and the South Wales division; and such divisions shall be respectively constituted as specified in the second column of the said schedule. North and South Wales circuits.

5. The county of Surrey shall not be included in any circuit, but commissions shall be issued not less often than twice in every year for the discharge of civil and criminal business therein. County of Surrey.

[6. *Arrangement as to clerks of assizes, &c. with respect only to the first time after the date of the order that justices of assizes go the several circuits as constituted by the order.* Spent.]

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SCHEDULE.

| *Name of Circuit.* | *Constitution of Circuit.* |
|---|---|
| Northern Circuit . . | County of Westmoreland.<br>County of Cumberland.<br>County of Lancaster. |
| North-Eastern Circuit . | County of Northumberland.<br>County of the town of Newcastle-upon-Tyne.<br>County of Durham.<br>County of York.<br>County of the city of York. |
| Midland Circuit . . | County of Lincoln.<br>County of the city of Lincoln.<br>County of Nottingham.<br>County of the town of Nottingham.<br>County of Derby.<br>County of Warwick.<br>County of Leicester.<br>Borough of Leicester.<br>County of Northampton.<br>County of Rutland.<br>County of Buckingham.<br>County of Bedford. |

| *Circuits.* | *Name of Circuit.* | *Constitution of Circuit.* |
|---|---|---|
| | South-Eastern Circuit . | County of Norfolk.<br>County of the city of Norfolk.<br>County of Suffolk.<br>County of Huntingdon.<br>County of Cambridge.<br>County of Hertford.<br>County of Essex.<br>County of Kent.<br>County of Sussex. |
| | Oxford Circuit . . | County of Berks.<br>County of Oxford.<br>County of Worcester.<br>County of the city of Worcester.<br>County of Stafford.<br>County of Salop.<br>County of Hereford.<br>County of Monmouth.<br>County of Gloucester.<br>County of the city of Gloucester. |
| | Western Circuit . . | County of Southampton.<br>County of Wilts.<br>County of Dorset.<br>County of the city of Exeter.<br>County of Devon.<br>County of Cornwall.<br>County of Somerset.<br>County of the city of Bristol. |
| | North and South Wales Circuit. | (*a.*) North Wales Division:—<br>County of Montgomery.<br>County of Merioneth.<br>County of Caernarvon.<br>County of Anglesea.<br>County of Denbigh.<br>County of Flint.<br>County of Chester.<br>(*b.*) South Wales Division:—<br>County of Glamorgan.<br>County of Carmarthen.<br>County of the borough of Carmarthen.<br>County of Pembroke.<br>County of the town of Haverfordwest.<br>County of Cardigan.<br>County of Brecknock.<br>County of Radnor. |

# ORDERS IN COUNCIL.

## IV.

## ECCLESIASTICAL ASSESSORS.

November 28th, 1876.

At the Court at Windsor, the 28th day of November, 1876.

Present: The Queen's Most Excellent Majesty; Lord President; Lord Chamberlain; Earl of Derby; Mr. Secretary Cross.

Whereas there was this day read at the board a representation, dated at the council chamber, Whitehall, on the 15th November instant, from the Right Honourable and Most Reverend the Archbishop of Canterbury, the Right Honourable and Most Reverend the Archbishop of York, the Right Honourable and Right Reverend the Bishop of London, the Right Honourable the Lord Chancellor, and the Right Honourable the Lords of the Judicial Committee of her Majesty's Privy Council, humbly recommending to her Majesty that the following be the rules under the Appellate Jurisdiction Act, 1876,* by which it is enacted that her Majesty may, by order in council, with the advice of the Judicial Committee of her Majesty's Privy Council, or any five of them, of whom the Lord Chancellor shall be one, and of the archbishops and bishops being members of her Majesty's Privy Council, or any two of them, make rules for the attendance on the hearing of ecclesiastical cases as assessors of the said committee of such number of the archbishops and bishops of the Church of England as may be determined by such rules, and that the rules may provide for the assessors being appointed for one or more year or years, or by rotation, or otherwise, and for filling up any temporary or other vacancies in the office of assessor:—

* Sect. 14, p. 198.

"I. The Archbishop of Canterbury, the Archbishop of York, and the Bishop of London shall be ex officio assessors of the Judicial Committee of her Majesty's Privy Council on the hearing of ecclesiastical cases according to the following rota, that is to say, the Archbishop of Canterbury from this day until the

*Ecclesiastical Assessors under Act of* 1876.

1st of January, 1878; the Archbishop of York from the 1st of January, 1878, till the 1st of January, 1879; and the Bishop of London from the 1st of January, 1879, until the 1st of January, 1880, and so on by a similar rotation for the period of one year each.

"II. The other bishops of dioceses within the provinces of Canterbury and York shall attend as assessors of the Judicial Committee on the hearing of ecclesiastical cases according to the following rota, that is to say, from this day until the 1st of January, 1878, the four bishops who on this day are the four junior bishops for the time being; seniority for the purpose of this order to be reckoned from the date of appointment to the episcopal see; from the 1st of January, 1878, till the 1st of January, 1879, the four bishops who on the 1st of January, 1878, shall be the four bishops next in order of seniority; and from the 1st of January, 1879, till the 1st of January, 1880, the four bishops who on the 1st of January, 1879, shall be the four bishops next in order of seniority, and so on by a similar rotation until the senior bishop for the time being is reached, when the rotation shall be carried back to and again commenced with the junior bishop.

"III. In the event of any one, or more than one, vacancy occurring in the office of ecclesiastical assessor, the vacancy or vacancies shall be filled up by the person or persons then next according to the rotations aforesaid.

"IV. A summons to attend on the hearing of every ecclesiastical case about to be heard before the said Judicial Committee shall be issued to the five ecclesiastical assessors for the time being; and no such case shall be heard before the said Judicial Committee unless there are at least three of such assessors present at the hearing; provided that the assessors present at the commencement of the hearing of any such case shall continue to be the assessors for that case until it shall be fully heard and disposed of, although their term of office, according to the rotation aforesaid, may in the meantime have expired; provided also, that in the event of the death, resignation, or absence by reason of illness or other unavoidable cause, of any one of the assessors present at the commencement of the hearing, the hearing of the case may proceed so long as at least two assessors are present."

Her Majesty, having taken the said representation into consideration, was pleased by and with the advice of her Privy

*Ecclesiastical Assessors under Act of 1876.*

Council, to approve the said rules made upon the recommendation of the Right Honourable the Most Reverend and Right Reverend Prelates, the Right Honourable Lord Chancellor, and the Right Honourable the Lords of the Judicial Committee as aforesaid, and to order, as it is hereby ordered, that the same be punctually observed, obeyed, and carried into execution. Whereof the Most Reverend and Right Reverend the Archbishops and Bishops of dioceses, within the provinces of Canterbury and York, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

C. L. Peel.

# ORDERS IN COUNCIL.

## V.

## ABOLITION OF COMMON PLEAS AND EXCHEQUER.

December 16th, 1880.

At the Court at Windsor, the 16th day of December, 1880.

Present: The Queen's Most Excellent Majesty in Council.

* Sect. 32, p. 31.

Whereas by "The Supreme Court of Judicature Act, 1873," it is enacted that her Majesty in Council may from time to time, upon any report or recommendation of the Council of Judges of the Supreme Court in the said act mentioned, order that any reduction or increase in the number of divisions of the High Court of Justice may, pursuant to such report or recommendation be carried into effect; and may give all such further directions as may be necessary or proper for that purpose; and such order may provide for the abolition on vacancy of the distinction of the offices of (amongst others) the Chief Justice of the Common Pleas and the Chief Baron of the Exchequer, and of the salaries, pensions, and patronage attached to such offices, from the offices of the other judges of the High Court of Justice, notwithstanding anything in the said act relating to the continuance of such offices, salaries, pensions, and patronage, but no such order of her Majesty in Council shall come into operation until the same shall have been laid before each house of parliament for thirty days on which that house shall have sat, nor if within such period of thirty days, an address is presented to her Majesty by either house of parliament, praying that the same may not come into operation. Any such order in respect whereof no such address shall have been presented to her Majesty, shall, from and after the expiration of such period of thirty days, be of the same force and effect as if it had been in the said act expressly enacted: Provided always, that the total number of the judges of the Supreme Court shall not be reduced or increased by any such order.

And whereas at a meeting of a Council of the Judges of the Supreme Court of Judicature duly assembled at her Majesty's Palace of Westminster, on the 27th day of November, 1880, pursuant to the Supreme Court of Judicature Act,

1873, section 75,* and continued by adjournment on the 29th of the same month. * Page 51

It was resolved:

That a report be humbly made and submitted to her Majesty by this Council of Judges, pursuant to the Supreme Court of Judicature Act, 1873, section 32, † to the following effect:— † Page 31.

(A.) That in the opinion of this Council of Judges it is expedient that the number of the divisions of her Majesty's High Court of Justice be reduced by the consolidation and union in one division of all the judges now attached respectively to the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division.

(B.) That the Lord Chief Justice of England be the president of the division to be so formed by such consolidation and union.

(C.) That the division to be so formed be called "The Queen's Bench Division.

(D.) That all causes and matters which, at the time when any order in council for the purpose of carrying these recommendations into effect, shall come into operation, may be pending in any of the three divisions to be so united and consolidated, be transferred to the Queen's Bench Division to be so formed as aforesaid, and that all proceedings of every kind which may be then pending in any such causes or matters be continued, carried on, and completed in the Queen's Bench Division to be so formed as aforesaid, in the same manner in all respects as they would have been in the division to which they were previously assigned if the same had not been united or consolidated with such other two divisions as aforesaid.

(E.) That all causes, matters, and other proceedings, which by or under the Supreme Court of Judicature Act, 1873, or any act amending the same, or any rule or order made pursuant thereto, have been or are assigned to the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division respectively of her Majesty's High Court of Justice, be, from and after the time when such order in council as aforesaid shall take effect, assigned to the Queen's Bench Division, to be formed by such consolidation and union as aforesaid.

(F.) That the office of Lord Chief Baron being now vacant (*a*), that office be reduced to an equality with the offices of the other judges of her Majesty's High

(*a*) This office had become vacant by the death of Kelly, C. B., in September, 1880.

Court of Justice who are not ex-officio judges of her Majesty's Court of Appeal, by the abolition of the rank and title of Lord Chief Baron of the Exchequer, and of all other distinctions between the office of any judge who may be hereafter appointed to fill the place in the said High Court of Justice now vacant by the death of the late Lord Chief Baron of the Exchequer, and the offices of the other judges of the said High Court of Justice who are not ex-officio judges of her Majesty's Court of Appeal, and between the salary, pension, and patronage attached to such office, and the salaries, pensions, and patronage of such other judges of the said High Court of Justice as aforesaid.

(G.) That upon the vacancy in the office of Lord Chief Justice of the Common Pleas, now about to take place by the promotion of the present Lord Chief Justice of the Common Pleas (of which her Majesty has been graciously pleased to approve) to the office of Lord Chief Justice of England (*b*), the office which will so become vacant be reduced to an equality with the offices of the other juges of her Majesty's High Court of Justice who are not ex-officio judges of her Majesty's Court of Appeal, by the abolition of the rank and title of Lord Chief Justice of the Common Pleas, and of all other distinctions between the office of any judge who may be hereafter appointed to fill the place in the said High Court of Justice now about to be vacated as aforesaid, and the offices of the other judges of the said High Court of Justice who are not ex-officio judges of her Majesty's Court of Appeal, and between the salary, pension, and patronage attached to such office, and the salaries, pensions, and patronage of such other judges of the said High Court of Justice as aforesaid.

(H.) That it be humbly recommended by this Council of Judges to her Majesty, that an order in council be made by her Majesty, if her Majesty shall so please, for the purpose of carrying this report, and the recommendations therein contained, into effect, in the manner provided by the Supreme Court of Judicature Act, 1873, section 32.

And whereas it has seemed fit to her Majesty, by and with the advice of her Privy Council, that the said report, and the recommendations therein contained, be carried into effect. Now, therefore, her Majesty, by and with the advice afore-

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(*b*) This office had become vacant by the death of Cockburn, C. J., on the 20th November, 1880.

said, is pleased to order, and it is hereby ordered, as follows:—

That the number of the divisions of her Majesty's High Court of Justice be reduced by the consolidation and union of all the judges now attached respectively to the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division in one division to be called "the Queen's Bench Division," under the presidency of the Lord Chief Justice of England.

That the office of Lord Chief Justice of the Common Pleas being now vacant be reduced to an equality with the offices of the other judges of her Majesty's High Court of Justice, who are not ex-officio judges of her Majesty's Court of Appeal, by the abolition of the rank and title of Lord Chief Justice of the Common Pleas, and of all other distinctions between the office of any judge who may be hereafter appointed to fill the place in the said High Court of Justice now vacant as aforesaid, and the offices of the other judges of the said High Court of Justice who are not ex-officio judges of her Majesty's Court of Appeal, and between the salary, pension, and patronage attached to such office, and the salaries, pensions, and patronage of such other judges of the said High Court of Justice as aforesaid.

That the office of Lord Chief Baron being now vacant, that office be reduced to an equality with the offices of the other judges of her Majesty's High Court of Justice who are not ex-officio judges of her Majesty's Court of Appeal, by the abolition of the rank and title of Lord Chief Baron of the Exchequer, and of all other distinctions between the office of any judge who may be hereafter appointed to fill the place in the said High Court of Justice now vacant as last aforesaid, and the offices of the other judges of the said High Court of Justice who are not ex-officio judges of her Majesty's Court of Appeal, and between the salary, pension, and patronage attached to such office, and the salaries, pensions and patronage of such other judges of the said High Court of Justice as aforesaid.

And for the purpose of carrying into effect the consolidation and union of the said divisions in manner aforesaid, it is hereby further ordered:

That all causes and matters which at the time when this order shall, pursuant to the Supreme Court of Judicature Act, 1873, take effect, may be pending in any of the three divisions to be so united and consolidated, be transferred to the Queen's Bench Division to be so formed as aforesaid, and that all proceedings of every kind which may be then pending in any such causes or matters be continued, carried on, and completed in the Queen's Bench

Division to be so formed as aforesaid, in the same manner in all respects as they would have been in the division to which they were previously assigned if the same had not been united or consolidated with such other two divisions as aforesaid.

That all causes, matters, and other proceedings, which by or under the Supreme Court of Judicature Act, 1873 (*c*), or any act amending the same, or any rule or order made pursuant thereto (*d*), have been or are assigned to the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division respectively of her Majesty's High Court of Justice, be, from and after the time when this order, pursuant to the said Supreme Court of Judicature Act, 1873, shall take effect, assigned to the Queen's Bench Division, to be formed by such consolidation and union as aforesaid.

That all proceedings which have heretofore, by any law or custom other than such acts of parliament, rules, and orders as aforesaid, been taken or had respectively in the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division of the said High Court of Justice, be, from and after the time when this order shall take effect, taken and had in the Queen's Bench Division of the said High Court of Justice to be so formed by such consolidation and union as aforesaid.

That all powers and authorities which, by any law or custom have heretofore been exercised by the Chief Justice of the Common Pleas and the Chief Baron of the Exchequer (*e*) respectively, shall, from and after the time when this order shall take effect, be capable of being exercised by the Lord Chief Justice of England, unless such exercise thereof shall be contrary or repugnant to any express provision in any act of parliament contained.

That this order shall take effect and come into operation at the end of thirty days after the same shall have been laid before each house of parliament, pursuant to the Supreme Court of Judicature Act, 1873 (*f*), unless within such period of thirty days an address shall have been presented to her Majesty by either house of parliament, praying that the same may not come into operation.

C. L. PEEL.

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(*c*) See s. 34 of the Act of 1873, p. 33, *ante*.

(*d*) See *e. g.* R. S. C., Ord. V. Rule 4a, and Ord. XXXVI. Rule 8.

(*e*) See s. 96 of the Act of 1873, and note, *ante*, p. 62, as to appointment of sheriffs.

(*f*) The Order was laid on the tables of both Houses on the 6th Jan., 1881. See s. 32 of the Act of 1873, *ante*, p. 31. By that section, the thirty days are thirty *sitting days*, and the House of Lords sitting only four days a week, the Order came into and was in operation on the 26th February, 1881. See also notice issued on the 28th February, 1881, p. 471.

# ORDERS OF THE LORD CHANCELLOR, &c., WITH CONSENT OF TREASURY.

## I.

## COURT FEES.

October 28, 1875.

The Right Honourable Hugh MacCalmont Baron Cairns, Lord High Chancellor of Great Britain, by and with the advice and consent of the undersigned judges of the Supreme Court, and with the concurrence of the Lords Commissioners of her Majesty's Treasury, doth hereby in pursuance and execution of the powers given by the Supreme Court of Judicature Act, 1875,* and all other powers and authorities enabling him in this behalf, order and direct in manner following :—

* Sect. 26, p. 84.

### I.

The fees and percentages contained in the schedule hereto are fixed and appointed to be, and shall be taken in the High Court of Justice, and in the Court of Appeal, and in any court to be created by any commission, and in any office which is connected with any of those courts, or in which any business connected with any of those courts is conducted, and by any officer paid wholly or partly out of public moneys who is attached to any of those courts or the Supreme Court, or any judge of those courts, or any of them; and the said fees and percentages shall be taken by stamps, except those taken in the district registries, which shall, until further order, be taken in money, and applied and accounted for in such manner as the Treasury may from time to time direct.

### II.

The fees and percentages set forth in the column headed lower scale in the schedule hereto are to be taken and paid in all cases in which the lower scale of fees is to be charged and allowed to solicitors under the provisions of the additional rules of court † under the Supreme Court of Judicature Act, 1875, issued by order in council, dated the 12th day of August, 1875, and the fees and percentages set forth in the column

† Page 407.

*Court Fees.*

headed higher scale in the schedule hereto are to be taken and paid in all other cases.

III.

Chancery Division. * Page 33.

In causes and matters by the 34th section of the Supreme Court of Judicature Act, 1873,* assigned to the Chancery Division :—

The solicitor or party acting in person shall, on any proceeding in which he claims to pay fees according to the lower scale, file with the proper officer a certificate in the form hereunder set forth, of which certificate the officer is, at the request of any solicitor or any party acting in person in the cause or matter, to mark a copy without a fee.

On production of such copy of the certificate all officers of the court are to receive and file all proceedings in the cause or matter bearing stamps according to the lower scale.

In any case certified for the lower scale of court fees, in which it shall happen that the solicitor shall become entitled to charge and be allowed according to the higher scale of solicitors' fees, the deficiency in the fees of court is to be made good.

In any case in which the fees have been paid upon the higher scale, and in which it shall happen that the solicitor shall become entitled to charge and be allowed only according to the lower scale of solicitors' fees, the excess of fees so paid may be allowed upon the taxation of costs, if the circumstances of the case shall, in the judgment of the taxing officer, justify such allowance.

IV.

Matters excepted from order.

The provisions in this order shall not apply to or affect any of the matters following (that is to say) :—

Jurisdiction not transferred.

The existing fees and percentages in respect of any of the jurisdictions which are not, by the Supreme Court of Judicature Acts, 1873 and 1875, transferred to the High Court of Justice or the Court of Appeal;

Probate, Divorce, Admiralty, Bankruptcy appeal.

The existing fees and percentages in respect of any matter at the time of the passing of the Supreme Court of Judicature Act, 1875, within the jurisdiction of the Court of Probate, the Court for Divorce and Matrimonial Causes, or the Admiralty Court, or relating to any appeal from the chief judge in bankruptcy, except so far as the procedure in any such matter, or the fees or percentages to be taken in respect thereof, is or are expressly varied by the schedule to the said act, or by this order, or by any rules of court made or to be made by order in council before the commencement of the said act;

Criminal proceedings.

The existing fees and percentages in respect of any criminal proceedings, other than such proceedings on the crown side of the Queen's Bench Division as the scale contained in the schedule hereto may be applicable to;

*Court Fees.*

Revenue.

The existing fees and percentages in respect of matters on the revenue side of the Exchequer Division, and proceedings and business in the office of the Queen's Remembrancer other than such matters, proceedings, and business as the scale contained in the schedule hereto may be applicable to;

Sheriffs.

The existing fees and percentages authorized to be taken by any sheriffs, under sheriffs, deputy sheriffs, bailiffs, or other officers or ministers of sheriffs;

Statutory fees.

The existing fees and percentages directed to be taken or paid by any act of parliament, and in respect of which no fee or percentage is hereby provided;

Fees due.

The existing fees and percentages which shall have become due or payable before the commencement of the Judicature Acts, 1873 and 1875;

Pending business.

The existing fees and percentages in respect of any proceedings in any cause or matter pending at the commencement of the said acts, and in respect of which no fee or percentage is hereby provided.

V.

Persons suing in formâ pauperis.

The existing rules and practice, applicable to proceedings by persons suing in formâ pauperis, shall continue and be applicable to proceedings to which this order relates.

VI.

Abolition of existing fees.

Save as otherwise provided by this order, all existing fees and percentages which may be taken in any of the courts whose jurisdiction is, by the Judicature Acts, 1873 and 1875, transferred to the High Court of Justice or Court of Appeal, or in any office which is connected with any of those courts, or in which any business connected with any of those courts is conducted, or by any officer paid wholly or partly out of public moneys who is attached to any of those courts, or the Supreme Court, or any judge of those courts, or any of them, shall be and are hereby abolished.

VII.

Folio.

A folio is to comprise 72 words, every figure comprised in a column being counted as one word.

VIII.

Interpretation.

The provisions of Order LXIII.* in the first schedule to the Supreme Court of Judicature Act, 1875, shall apply to this order.

* Page 273.

IX.

Commencement of order.

This order shall come into operation at the time of the commencement of the Supreme Court of Judicature Acts, 1873 and 1875.

*Court Fees.*

*Form of Certificate for paying Lower Scale of Court Fees above referred to.*

(Title of cause or matter.)

I hereby certify that to the best of my judgment and belief the lower scale of fees of court is applicable to this case.

Dated, &c.

A. B.,
Solicitor for Plaintiff or Defendant.

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THE SCHEDULE ABOVE REFERRED TO.

An order or rule herein referred to by number shall mean the order or rule so numbered in the first schedule to the Supreme Court of Judicature Act, 1875.

SUMMONSES, WRITS, COMMISSIONS, AND WARRANTS.

| | Lower Scale. £ | s. | d. | Higher Scale. £ | s. | d. |
|---|---|---|---|---|---|---|
| On sealing a writ of summons for commencement of an action | 0 | 5 | 0 | 0 | 10 | 0 |
| On sealing a concurrent, renewed or amended writ of summons for commencement of an action | 0 | 2 | 6 | 0 | 2 | 6 |
| On sealing a notice for service under Order XVI, Rule 18* | 0 | 2 | 6 | 0 | 2 | 6 |
| On sealing a writ of mandamus or injunction | 0 | 10 | 0 | 1 | 0 | 0 |
| On sealing a writ of subpœna not exceeding three persons | 0 | 2 | 6 | 0 | 5 | 0 |
| On sealing every other writ | 0 | 5 | 0 | 0 | 10 | 0 |
| On sealing a summons to originate proceedings in the Chancery Division | 0 | 5 | 0 | 0 | 10 | 0 |
| On sealing a duplicate thereof | 0 | 1 | 0 | 0 | 5 | 0 |
| On sealing a copy of same for service | 0 | 1 | 0 | 0 | 5 | 0 |
| On sealing or issuing any other summons or warrant | 0 | 2 | 0 | 0 | 3 | 0 |
| On sealing or issuing a commission to take oaths or affidavits in the Supreme Court | 5 | 0 | 0 | 5 | 0 | 0 |
| Every other commission | 1 | 0 | 0 | 1 | 0 | 0 |
| On marking a copy of a petition of right for service | 0 | 1 | 0 | 0 | 5 | 0 |

* Page 159.

APPEARANCES.

| | | | | | | |
|---|---|---|---|---|---|---|
| On entering an appearance, for each person | 0 | 2 | 0 | 0 | 2 | 0 |

COPIES.

| | | | | | | |
|---|---|---|---|---|---|---|
| For a copy of a written deposition of a witness to enable a party to print the same, for each folio | 0 | 0 | 4 | 0 | 0 | 4 |
| For examining a written or printed copy, and marking same as an office copy, for each folio | 0 | 0 | 2 | 0 | 0 | 2 |
| For making a copy and marking same as an office copy, for each folio | 0 | 0 | 6 | 0 | 0 | 6 |

| | Lower Scale. £ | s. | d. | Higher Scale. £ | s. | d. | *Court Fees.* |
|---|---|---|---|---|---|---|---|
| For a copy in a foreign language, the actual cost. | | | | | | | |
| For a copy of a plan, map, section, drawing, photograph, or diagram, the actual cost. | | | | | | | |
| For a printed copy of an order, not being an office or certified copy, for each folio - - | 0 | 0 | 1 | 0 | 0 | 1 | |
| **ATTENDANCES.** | | | | | | | |
| On an application, with or without a subpœna, for any officer to attend as a witness, or to produce any record or document to be given in evidence (in addition to the reasonable expenses of the officer) for each day or part of a day he shall necessarily be absent from his office - - - - - - - - | 1 | 0 | 0 | 1 | 0 | 0 | |
| The officer may require a deposit of stamps on account of any further fees, and a deposit of money on account of any further expenses which may probably become payable beyond the amount paid for fees and expenses on the application, and the officer or his clerk taking such deposit shall thereupon make a memorandum thereof on the application. | | | | | | | |
| The officer may also require an undertaking in writing to pay any further fees and expenses which may become payable beyond the amounts so paid and deposited. | | | | | | | |
| **OATHS, &c.** | | | | | | | |
| For taking an affidavit or an affirmation or attestation upon honour in lieu of an affidavit or a declaration, except for the purpose of receipt of dividends from the paymaster-general, for each person making the same - - - - - - - - | 0 | 1 | 6 | 0 | 1 | 6 | |
| And in addition thereto for each exhibit therein referred to and required to be marked, whether annexed or not - - | 0 | 1 | 0 | 0 | 1 | 0 | |
| **FILING.** | | | | | | | |
| On filing a special case or petition of right - | 0 | 10 | 0 | 1 | 0 | 0 | |
| On filing an affidavit with exhibits (if any) annexed, submission to arbitration, award, bill of sale, warrant of attorney, cognovit, bail, satisfaction piece, and writ of execution with return - - - - - - | 0 | 2 | 0 | 0 | 2 | 0 | |
| On filing a scheme pursuant to the statute 30 & 31 Vict. c. 127 (*a*) or the Liquidation Act, 1868 - - - - - - - | 1 | 0 | 0 | 1 | 0 | 0 | |
| On filing a caveat - - - - - - | 0 | 5 | 0 | 0 | 5 | 0 | |

(*a*) The Railway Companies Act, 1867.

*Court Fees.*

| | Lower Scale. £ | s. | d. | Higher Scale. £ | s. | d. |
|---|---|---|---|---|---|---|
| **CERTIFICATES.** | | | | | | |
| For a certificate of appearance, or of a pleading, affidavit, or proceeding having been entered, filed, or taken, or of the negative thereof - - - - - - - - | 0 | 1 | 0 | 0 | 4 | 0 |
| **SEARCHES AND INSPECTIONS.** | | | | | | |
| On an application to search for an appearance or an affidavit, and inspecting the same - | 0 | 1 | 0 | 0 | 1 | 0 |
| On an application to search an index, and inspect a pleading, decree, order or other record, unless otherwise expressly provided for by any act of parliament or this order, and to inspect documents deposited for safe custody or production pursuant to an order, for each hour or part of an hour occupied - | 0 | 2 | 6 | 0 | 2 | 6 |
| Not exceeding on one day - - - - | 0 | 10 | 0 | 0 | 10 | 0 |
| **EXAMINATION OF WITNESSES.** | | | | | | |
| For every witness sworn and examined by an examiner or other officer in his office, including oath, for each hour - - - | 0 | 10 | 0 | 0 | 10 | 0 |
| For an examination of witnesses by any such officer away from the office (in addition to reasonable travelling and other expenses), per day - - - - - - - - | 3 | 0 | 0 | 3 | 0 | 0 |
| The officer may require a deposit of stamps on account of fees and a deposit of money on account of expenses, which may probably become payable beyond any amount paid for fees and expenses upon the examination, and the officer or his clerk taking such deposit shall thereupon make a memorandum thereof and deliver the same to the party making the deposit. | | | | | | |
| The officer may also require an undertaking in writing to pay any further fees and expenses which may become payable beyond the amount so paid and deposited. | | | | | | |
| These fees are not to apply to the examination of witnesses for the purpose of any inquiry, taxation of costs, or other proceeding before the officer. | | | | | | |
| **HEARING.** | | | | | | |
| For entering or setting down, or re-entering or re-setting down an appeal to the Court of Appeal, or a cause for trial or hearing in any court in London or Middlesex, or at any assizes, including a demurrer, special case, and petition of right, but not any other petition, nor a summons adjourned from chambers - - - - - - - | 1 | 0 | 0 | 2 | 0 | 0 |

| | Lower Scale. £ s. d. | Higher Scale. £ s. d. | *Court Fees.* |
|---|---|---|---|
| For a certificate of an associate of the result of trial - - - - - - - - | 1 0 0 | 1 0 0 | |

JUDGMENTS, DECREES, AND ORDERS.

| | | | |
|---|---|---|---|
| For drawing up and entering a judgment, or a decree or a decretal order, whether on the original hearing of a cause or on further consideration, including a cause commenced by summons at chambers, and an order on the hearing of a special case or petition, and any order by the Court of Appeal - | 0 10 0 | 1 0 0 | |
| For drawing up and entering any other order, whether made in court or at chambers - | 0 3 0 | 0 5 0 | |
| For copy of a plan, map, section, drawing, photograph, or diagram, required to accompany any order, the actual cost. | | | |

TAKING ACCOUNTS.

| | | | |
|---|---|---|---|
| On taking an account of a receiver, guardian, consignee, bailee, manager, provisional, official or voluntary liquidator, or sequestrator, or of an executor, administrator, trustee, agent, solicitor, mortgagee, co-tenant, co-partner, execution creditor, or other person liable to account, when the amount found to have been received without deducting any payment shall not exceed 200*l.* - - - - - - - - | 0 2 0 | 0 2 0 | |
| Where such amount shall exceed 200*l.*, for every 50*l.* or fraction of 50*l.* - - - | 0 0 6 | 0 0 6 | |
| In the case of any such receiver, guardian, consignee, bailee, manager, liquidator, sequestrator, or execution creditor, the fees shall, upon payment, be allowed in the account, unless the court or judge shall otherwise direct, and in the case of taking the accounts of such other accounting parties the fees shall be paid by the party having the conduct of the order under which such account is taken, as part of his costs of the cause or matter (unless the court or judge shall otherwise direct), and in such case shall be taken upon the certificate of the result of any such account; but the fees shall be due and payable, although no certificate is required, on the account taken, or on such part thereof as may be taken, and the solicitor or party suing in person shall in such case cause the proper stamps (the amount thereof to be fixed by the officer) to be impressed on or affixed to the account. | | | |

*Court Fees.*

| | Higher Scale. £ s. d. | Lower Scale. £ s. d. |
|---|---|---|
| The officer taking the account may require a deposit of stamps on account of fees before taking the account, not exceeding the fees on the full amount appearing by the account to have been received, and the officer or his clerk taking such deposit shall make a memorandum thereof on the account. | | |
| **TAXATION OF COSTS.** | | |
| For taxing a bill of costs where the amount allowed does not exceed 8*l.* - - - - | 0 2 0 | 0 4 0 |
| Where the amount exceeds 8*l.*, for every 2*l.* allowed, or a fraction thereof - - - - | 0 0 6 | 0 1 0 |
| These fees, except where otherwise provided, shall be taken on signing the certificate or on the allowance of the bill of costs, as taxed, but the fees shall be due and payable if no certificate or allocatur is required on the amount of the bill as taxed, or on the amount of such part thereof as may be taxed, and the solicitor or party suing in person shall in such case cause the proper stamps (the amount thereof to be fixed by the officer) to be impressed on or affixed to the bill of costs. | | |
| The taxing officer may require a deposit of stamps an account of fees before taxation not exceeding the fees on the full amount of the costs as submitted for taxation, and the officer or his clerk on taking such deposit shall make a memorandum thereof on the bill of costs. | | |
| For a certificate or allocatur of the result, not being a judgment - - - - - - | — | 1 0 0 |
| The 58th Rule of Order V. of the Chancery Funds Consolidated Rules, 1874 (*b*) shall continue in force and be acted upon in cases to which it is applicable. | | |
| **PETITIONS.** | | |
| For answering a petition for hearing in court, and setting down - - - - - - | 0 5 0 | 1 0 0 |

(*b*) This rule is as follows:—"When costs are directed to be paid out of money in court, or out of the proceeds of securities in court, the taxing master shall certify the amount of the fees of taxation payable in respect of such costs, unless he shall certify that such fees are included in the costs as taxed. The Chancery paymaster shall carry over the amount so certified to be payable from the account to which money or proceeds are placed to a separate account in the books at the Chancery Pay Office for fees of taxation; and the amount so carried over shall from time to time, as the Treasury may direct, be paid to the account of her Majesty's Exchequer."

| | £ s. d. Lower Scale. | £ s. d. Higher Scale. |
|---|---|---|
| For answering a non-attendable petition, not being a petition for an order of course | 0 5 0 | 0 10 0 |
| On a matter of course order, on a petition of right | 0 10 0 | 0 10 0 |
| On an order for a commission on a petition of right | 1 0 0 | 1 0 0 |

REGISTER OF JUDGMENTS AND LIS PENDENS.

| | | |
|---|---|---|
| For registering a judgment or lis pendens, although more than one name may have to to be registered | 0 2 6 | 0 2 6 |
| For re-registering same | 0 1 0 | 0 1 0 |
| For a search for each name | 0 1 0 | 0 1 0 |
| For a certificate of entry of satisfaction | 0 1 0 | 0 1 0 |
| For certificate of a judgment for registration in Ireland or Scotland under the Judgments Extension Act, 1868, including affidavit | 0 2 0 | 0 2 0 |
| On filing for registration a certificate issued out of Courts of Dublin or Court of Session in Scotland under the same act, although more than one name may have to be registered under the same act | 0 7 0 | 0 7 0 |
| On every certificate of the entry of a satisfaction under the same act | 0 1 0 | 0 1 0 |
| For a search made in one or both of the registers of Irish and Scotch judgments, for each name | 0 1 0 | 0 1 0 |

MISCELLANEOUS.

| | | |
|---|---|---|
| On a report of a private bill in Parliament | 5 0 0 | 5 0 0 |
| On an allowance of bye-laws or table of fees | 1 0 0 | 1 0 0 |
| On a fiat of a judge | 0 5 0 | 0 5 0 |
| On signing an advertisement | — | 1 0 0 |
| Upon a reference to a master of the Queen's Bench, Common Pleas, or Exchequer Divisions, or a district registrar, for the purpose of any investigation or inquiry other than the taking of an account for which another fee is herein provided, for every hour or part of an hour the master or registrar is occupied | 0 10 0 | 0 10 0 |
| A deposit on account of fees before proceeding with such reference, or at any time during the course thereof, may be required, and a memorandum thereof shall be delivered to the party making the deposit. | | |
| On taking acknowledgment of a deed by a married woman | 1 0 0 | 1 0 0 |
| On taking a recognizance or bond | 0 10 0 | 0 10 0 |
| On taking bail, and taking same off the file and delivering | 0 2 0 | 0 2 0 |
| On a commitment | 0 5 0 | 0 5 0 |
| On an application to produce judge's notes | 0 5 0 | 0 5 0 |

*Court Fees.*

| | Lower Scale. £ | s. | d. | Higher Scale. £ | s. | d. |
|---|---|---|---|---|---|---|
| On appointment of commissioners under glebe exchange - - - - - - - | 1 | 0 | 0 | 1 | 0 | 0 |
| On examining and signing inrolments of decrees and orders - - - - - | 3 | 0 | 0 | 3 | 0 | 0 |
| On admission or re-admission of a solicitor - | 5 | 0 | 0 | 5 | 0 | 0 |
| On a written request for information at the Chancery Pay Office - - - - - - | 0 | 2 | 6 | 0 | 2 | 6 |
| For preparing a power of attorney at the Chancery Pay Office - - - - - | 0 | 3 | 0 | 0 | 3 | 0 |
| For transcript of an account in the books at the Chancery Pay Office, for each opening - | 0 | 2 | 0 | 0 | 2 | 0 |

CAIRNS, C.
G. JESSEL.
COLERIDGE.
FITZROY KELLY.
W. M. JAMES.
GEORGE MELLISH.
G. BRAMWELL.
NATHANL. LINDLEY.

We certify that this order is made with the concurrence of the Commissioners of her Majesty's Treasury.

MAHON.
ROW. WINN.

## II.

## FEES TAKEN BY OFFICIAL REFEREES.

April 24, 1877.

The Right Honourable Hugh MacCalmont Baron Cairns, Lord High Chancellor of Great Britain, with the advice and consent of the undersigned judges of the Supreme Court, and with the concurrence of the Lords Commissioners of her Majesty's Treasury, doth hereby, in exercise of the powers for this purpose given by the Supreme Court of Judicature Act, 1875, and of all other powers and authorities enabling him in this behalf, rescind, as to all matters, questions or issues which shall be referred to an official referee from and after the date hereof, the order as to the fees to be taken by the official referee made on the 1st day of February, 1876 (*a*), and doth order and direct as follows:—

From and after the date hereof, the fee to be taken by an official referee attached to the Supreme Court, in respect of all matters, questions or issues referred to him by any order, shall be the sum of 5*l.* for the entire reference, irrespective of the time occupied, which sum shall be paid before the reference is proceeded with.

Every such fee shall be collected by means of a stamp or stamps to be affixed to the appointment paper or summons issued by the official referee for appointing the time and place for proceeding with the reference.

Where the sittings under a reference are to be held elsewhere than in London, a convenient place in which the sittings may be held shall be provided to the satisfaction of the official referee, by and at the expense of the party proceeding with the reference; and there shall be paid in addition to the above fee of £5, £1 : 11*s.* 6*d.* for every night the official referee, and 15*s.* for every night the official referee's clerk is absent from London on the business of the reference, together with the reasonable expenses of their travelling from London and back.

A deposit on account of expenses may be required before proceeding with the reference, or at any time during the course thereof; and a memorandum of the amount deposited shall be delivered to the party making the deposit.

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(*a*) By the Rescinded Order in question (which see in the 2nd edition of this work, p. 416) the official referee's fee was one guinea for every hour or part of an hour the official referee was occupied.

The fees and expenses and deposit (if any) hereby authorized in respect of any reference shall be paid in the first instance by the party proceeding with the reference.

The official referees shall conform to all regulations that may be made from time to time by the Treasury for the accounting for all moneys received by them.

Dated this twenty-fourth day of April, one thousand eight hundred and seventy-seven.

CAIRNS, C.
JNO. MELLOR.
ROBT. LUSH.
HENRY MANISTY.

We certify that this order is made with the concurrence of the Commissioners of her Majesty's Treasury.

J. D. H. ELPHINSTONE.
ROW. WINN.

## III.

## FEES FOR SEARCHES.

The 6th day of August, 1880.

The Right Honourable Roundell Baron Selborne, Lord High Chancellor of Great Britain, by and with the advice and consent of the undersigned judges of the Supreme Court, and with the concurrence of the Lords Commissioners of her Majesty's Treasury, doth hereby, in pursuance and execution of the powers given by the Supreme Court of Judicature Act, 1875, and all other powers and authorities enabling him in this behalf, order and direct in manner following:—

1. The schedule to the order as to court fees made on the 28th of October, 1875, shall have effect as if there were inserted therein the following fees, namely:—

Searches and Inspections.

| | Lower Scale. £ | s. | d. | Higher Scale. £ | s. | d. |
|---|---|---|---|---|---|---|
| For an official certificate of the result of a search in one name in any register or index under the custody of the clerk of inrolments, the registrar of bills of sale, the registrar of certificates of acknowledgments of deeds by married women, or the registrar of judgments | 0 | 5 | 0 | 0 | 5 | 0 |
| For every additional name if included in same certificate | 0 | 2 | 0 | 0 | 2 | 0 |
| For a duplicate copy of certificate, if not more than three folios | 0 | 1 | 0 | 0 | 1 | 0 |
| For every additional folio | 0 | 0 | 6 | 0 | 0 | 6 |
| For a continuation search if made within 14 days of date of official certificate (the result to be indorsed on such certificate) | 0 | 1 | 0 | 0 | 1 | 0 |

Notices.

| | | | | | | |
|---|---|---|---|---|---|---|
| For a notice as to stock under Order 46, Rule 4* (Rule 23 of the Rules of the Supreme Court, April, 1880) | 0 | 10 | 0 | 0 | 10 | 0 |

* Page 234.

2. This order shall come into operation on the 1st day of September, 1880.

Selborne, C.
G. Jessel, M. R.
W. M. James, L. J.
Henry Cotton, L. J.

We certify that this order is made with the concurrence of he Commissioners of her Majesty's Treasury.

John Holmes.
Arthur D. Hayter.

# ORDERS OF THE TREASURY WITH THE CONCURRENCE OF THE LORD CHANCELLOR.

## I.

*As to the taking of the Fees and Percentages in the Supreme Court of Judicature* BY STAMPS, *except in the District Registries.*

October 28, 1875.

* Page 84.

WHEREAS by section 26* of the Supreme Court of Judicature Act, 1875, it is provided that the fees and percentages appointed to be taken in the High Court of Justice and in the Court of Appeal, and in any court to be created by any commission, and in any office which is connected with any of those courts or in which any business connected with any of those courts is conducted, shall, except so far as they be otherwise directed, be taken by means of stamps; and further, that such stamps shall be impressed or adhesive, as the Treasury may from time to time direct; and that the Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for publishing the amount of the fees and regulating the use of such stamps, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for ensuring the proper cancellation of such stamps.

Now we, the undersigned, being two of the Lords Commissioners of her Majesty's Treasury, do, with the concurrence of the Lord Chancellor, hereby give notice and order and direct—

1. That from and after the 1st November next, being the date fixed for the commencement of this act, all orders and regulations now in force with respect to the use, proper cancellation, mode of keeping accounts, and allowance of fee stamps in

The Court of Chancery,
The several Common Law Courts,
The Court of Probate,
The Court for Divorce and Matrimonial Causes,
The Admiralty Court,

or in relation to appeals from the Chief Judge in Bankruptcy, or from the Court of Appeal in Chancery in bankruptcy matters, shall continue in force up to the beginning of the sittings to take place after January next, or until they shall respectively be altered or annulled by any rules hereafter to be made and published in conformity with the act.

2. That the stamps to be used in the collection of fees and percentages payable under the order made in pursuance of the powers given by the Supreme Court of Judicature Act,

*Taking Fees by Stamps.*

1875, bearing date this day, shall until further notice be either impressed or adhesive as directed in any previous order; and in cases to which no previous order is applicable, shall be either impressed or adhesive, at the option of the parties by whom the fees are payable.

3. That until we do order to the contrary, the dies heretofore in use for impressing stamps in any of the courts affected by the said act, and also the adhesive stamps heretofore in use, shall be available and valid for the taking of the said fees and percentages, and may be used notwithstanding that new dies and stamps appropriated to the Supreme Court of Judicature may in the meantime have been issued by the Commissioners of Inland Revenue, which will also be valid and available.

4. That for such documents in the Chancery, the Queen's Bench, the Common Pleas, and the Exchequer Divisions of the Supreme Court of Judicature as may be, under any existing rule or order, stamped with an adhesive stamp or stamps, adhesive stamps appropriated by the words "judicature fees" shall be used: Provided always, that up to the beginning of the sittings to take place after January next, the adhesive stamps hitherto used in the Courts of Chancery and Common Law shall be available and may be used for such documents in the Supreme Court of Judicature.

5. And that where any of such fees are payable in respect of any matter or thing to be done by any officer or in any office whatever of the Supreme Court of Judicature, and it shall not have been customary or may not be necessary to use any written or printed document or paper in reference to such matter or thing whereon the stamp could be stamped or affixed, the party or his solicitor requiring such matter or thing to be done, shall make application for the same by a præcipe, or short note in writing or print, and a stamp denoting the amount of the fees so payable shall be stamped or affixed to such præcipe or note.

6. That where a fee is payable, but no directions are found in previous orders as to the document to which the stamp is to be applied, it shall be lawful, until we do otherwise order, for any officer of the Supreme Court whose duty it would be to see that the fee in question is duly paid by means of a stamp, to decide on what document such stamp shall be impressed or affixed.

Given under our hands,

MAHON.

ROW. WINN.

I hereby signify my concurrence in the before-mentioned rules and regulations.

CAIRNS, C.

## II.

*As to the Fees and Percentages which are required to be taken in the Supreme Court of Judicature by means of* STAMPS.

April 22, 1876.

Page 84. WHEREAS by section 26* of the Supreme Court of Judicature Act, 1875, it is provided that the fees and percentages appointed to be taken in the High Court of Justice and in the Court of Appeal, and in any court to be created by any commission, and in any office which is connected with any of those courts, or in which any business connected with any of those courts is conducted, shall, except so far as they be otherwise directed, be taken by means of stamps; and further that such stamps shall be impressed or adhesive as the Treasury may from time to time direct; and that the Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for publishing the amount of the fees and regulating the use of such stamps, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for ensuring the proper cancellation of such stamps and for keeping accounts of such stamps:

And whereas by an order made under the same section of the said act, on the 28th day of October, 1875, it was (amongst other things) provided that the stamps to be used in the collection of the fees and percentages therein mentioned should, until further notice, be either impressed or adhesive as directed in any previous order, and in cases to which no previous order was applicable should be either impressed or adhesive, at the option of the parties by whom the fees were payable; and it was also provided that up to the beginning of the sittings on the 25th day of April, 1876, the adhesive stamps used before the publication of the said order in the Courts of Chancery and Common Law should be available, and might be used, in the Supreme Court of Judicature:

And whereas it is expedient to further extend the use of the same stamps, and to make other provisions in lieu of, and in addition to those contained in the said order of the 28th day of October, 1875:

*Taking Fees by Stamps.*

Now we, the undersigned, being two of the Lords Commissioners of her Majesty's Treasury, do with the concurrence of the Lord Chancellor, hereby give notice and order and direct:—

1. That from and after the 25th day of April, 1876, the stamps used for denoting the said fees and percentages shall be of the character, and be applied and otherwise dealt with, as prescribed by the schedule hereto.

2. That the adhesive stamps at present in use in the Supreme Court of Judicature shall continue to be used so long as they are supplied by the Commissioners of Inland Revenue.

3. That in any case in which a deposit on account of probable fees and expenses is required, the following regulations shall be observed:—

AS TO DEPOSITS.

(*a.*) The party, or his solicitor, from whom under any order as to court fees a deposit may be required, shall, before the matter or cause be proceeded with, present for the signature of the officer of the court requiring the deposit, a certificate duly stamped, for the amount of such deposit. Forms of certificates provided by the Commissioners of Inland Revenue may be obtained at the Inland Revenue Office, Somerset House, or at such other places as the commissioners may appoint.

(*b.*) When the fees and expenses are ascertained, the said officer of the court shall endorse upon the said certificate the amount thereof.

(*c.*) If the amount is in excess of the deposit, the certificate, bearing an additional stamp equal to the excess, must be produced to the said officer before he delivers his judgment or award, or gives his decision in the matter or cause.

(*d.*) If the amount of the fees and expenses is less than the deposit, the holder of the certificate may obtain repayment of the difference upon presenting the certificate so endorsed at the Inland Revenue Office, Somerset House.

## The SCHEDULE above referred to.

### SUMMONSES, WRITS, COMMISSIONS AND WARRANTS.

| | Document to be stamped. | Character of Stamp to be used. | Regulations and Observations. |
|---|---|---|---|
| On sealing a writ of summons for commencement of an action .. | Writ of Summons. | Impressed or adhesive. | Forms of writ with the impressed stamp will be sold at the Inland Revenue Office and by law stationers. |
| On sealing a concurrent, renewed or amended writ of summons for commencement of an action. | | | |
| On sealing a notice for service under Order XVI., Rule 18. [p. 159, *ante*.] | Notice ..... | Impressed or adhesive. | Forms with the impressed stamp will be sold at the Inland Revenue Office and by law stationers. |
| On sealing a writ of mandamus or injunction..... | Præcipe left at time of issuing writ.. | Impressed. | Præcipes with the impressed stamp will be sold at the Inland Revenue Office and by law stationers. |
| On sealing a writ of subpœna not exceeding three persons .. | | | |
| On sealing every other writ .... | | | |
| On sealing a summons to originate proceedings in the Chancery Division. | Summons ..... | Impressed .. | A form of summons will be sold at the Inland Revenue Office and by law stationers. |
| On sealing a duplicate thereof .. | Duplicate summons. | Impressed. | |
| On sealing a copy of same for service. | Copy of summons. | Impressed or adhesive. | |
| On sealing or issuing any other summons or warrant. | Summons ..... | Impressed or adhesive. | |
| On sealing or issuing a commission to take oaths or affidavits in the Supreme Court. | Commission .... | Impressed .. | Forms of commission with the impressed stamp will be sold at the Inland Revenue Office. |
| Every other commission..... | Commission .... | Impressed .. | The commission or the copy of petition to be written on impressed paper, or the document to be produced at the Inland Revenue Office to be stamped. |
| On marking a copy of a petition of right for service. | Copy of petition | Impressed .. | |

### APPEARANCES.

The fee payable on entering an appearance to be denoted by an impressed stamp on the form of memorandum as prescribed by the Appendix to the Supreme Court of Judicature Act, 1875 [p. 286, *ante*], and where the appearance of more than one person is entered by the same memorandum, the fees for all persons beyond the first to be denoted by means of impressed or adhesive stamps.

Forms of memorandum of appearance with the impressed stamp for one or more defendants will be sold at the Inland Revenue Office and by law stationers.

COPIES.

| | Document to be stamped. | Character of Stamp to be used. |
|---|---|---|
| For a copy of a written deposition of a witness to enable a party to print the same. | Copy..... | Impressed or adhesive. |
| For examining a written or printed copy, and marking same as an office copy. | Copy..... | Impressed or adhesive. |
| For making a copy and marking same as an office copy. | Copy..... | Impressed or adhesive. |
| For a copy in a foreign language ..... | Copy..... | Impressed or adhesive. |
| For a copy of a plan, map, section, drawing, photograph or diagram. | Præcipe or copy | Impressed or adhesive. |
| For a printed copy of an order, not being an office or a certified copy. | Copy..... | Impressed or adhesive. |

ATTENDANCES.

The fees payable under this heading to be denoted either by an impressed or adhesive stamp on the subpœna, notice or other document requiring the attendance of the officer.

If the officer's attendance be required beyond one day, the additional fee per diem after the first to be taken by means of a præcipe with the impressed stamp, filed in the department from which the officer is summoned.

OATHS, &c.

| | Document to be stamped. | Character of Stamp to be used. | Regulations and Observations. |
|---|---|---|---|
| For taking an affidavit or an affirmation or attestation upon honour in lieu of an affidavit or a declaration, except for the purpose of receipt of dividends from the Paymaster-General, on which no fee is payable. | Affidavit or other document answering thereto. | Impressed or adhesive. | |

| | Document to be stamped, and Character of Stamp to be used. | Regulations and Observations. |
|---|---|---|
| And in addition thereto, for each exhibit therein referred to and required to be marked. | Stamp to be impressed or adhesive on exhibit if practicable, but if not, to be impressed on præcipe filed. | |

### FILING.

| | Document to be stamped. | Character of Stamp to be used. | Regulations and Observations. |
|---|---|---|---|
| On filing a special case or petition of right. | Special case, petition of right or præcipe. | Impressed .. | Where practicable, stamp to be on special case or petition of right, and in other cases on præcipe filed. |
| On filing an affidavit with exhibits (if any) annexed, submission to arbitration, award, bill of sale, warrant of attorney, cognovit, bail, satisfaction piece and writ of execution with return. | Document filed. | Impressed or adhesive. | |
| On filing a scheme pursuant to the statute 30 & 31 Vict. c. 127, or the Liquidation Act, 1868. | Scheme..... | Impressed. | |
| On filing a caveat ..... | Caveat ..... | Impressed. | |

### CERTIFICATES.

| | Document to be stamped. | Character of Stamp to be used. | Regulations and Observations. |
|---|---|---|---|
| For a certificate of appearance or of a pleading, affidavit or proceeding having been entered, filed or taken, or of the negative thereof. | Certificate .... | Impressed or adhesive. | Forms of certificate with the impressed stamp will be sold at the Inland Revenue Office and by law stationers. |

### SEARCHES AND INSPECTIONS.

The fees on searches and inspections to be taken by means of impressed stamps on a form which will be issued at the Inland Revenue Office and sold there, and by law stationers.

### EXAMINATION OF WITNESSES.

The fees under this heading may still be denoted by means of adhesive stamps, which may be affixed either to the deposition or to the order or application paper for examination.

HEARING.

| | Document to be stamped. | Character of Stamp to be used. | Regulations and Observations. |
|---|---|---|---|
| For entering or setting down, or re-entering or re-setting down, an appeal to the Court of Appeal, or a cause for trial or hearing in any Court in London or Middlesex, or at any assizes, including a demurrer, special case, and petition of right, but not any other petition, nor a summons adjourned from chambers. | In the registry office, Chancery Division, on forms provided for the purpose. | Impressed. | Forms, with the impressed stamp, will be sold at the Inland Revenue Office, and at the Registrar's Office, Chancery Division. |
| | At offices of Associates on copy of pleadings. | Impressed or adhesive. | |
| | At all other offices of the High Court or Court of Appeal on præcipe. | Impressed. | |
| For certificate of an Associate of the result of trial. | Certificate .... | Impressed or adhesive. | |

JUDGMENTS, DECREES, AND ORDERS.

| | Document to be stamped. | Character of Stamp to be used. | Regulations and Observations. |
|---|---|---|---|
| For drawing up and entering a judgment, or decree or decretal order, whether on the original hearing of a cause or on further consideration, including a cause commenced by summons at chambers, and an order on the hearing of a special case or petition, and any order by the Court of Appeal. | Judgment or order. | Stamp to be impressed or adhesive on the judgment or order, except at the Crown Office, where, as far as practicable, a præcipe, with the impressed stamp, should be used. | |
| For drawing up and entering any other order, whether made in court or at chambers. | Order ..... | Impressed or adhesive. | |
| For copy of a plan, map, section, drawing, photograph, or diagram required to accompany any order. | Copy..... | Impressed or adhesive. | Where an adhesive stamp would damage the copy, a præcipe, with the impressed stamp, should be used. |

TAKING ACCOUNTS.

The fees payable under this heading when taken on the accounts to be denoted by means of adhesive stamps affixed to the accounts or by impressed stamps on paper to be left at the office, but when taken on a certificate they may be denoted either by impressed or adhesive stamps.

### TAXATION OF COSTS.

| | Document to be stamped. | Character of Stamp to be used. | Regulations and Observations. |
|---|---|---|---|
| For taxing a bill of costs ..... | Stamp to be adhesive on bill of costs, but where a certificate, allocatur, or præcipe is used, the fee to be denoted by impressed stamps. | | |
| For a certificate or allocatur of the result, not being a judgment. | Certificate or allocatur. | Impressed. | |

### PETITIONS.

| | Document to be stamped. | Character of Stamp to be used. | Regulations and Observations. |
|---|---|---|---|
| For answering a petition for hearing in court, and setting down | Petition ..... | Impressed or adhesive. | |
| For answering a non-attendable petition, not being a petition for an order of course. | Petition ..... | Impressed or adhesive. | |
| On a matter of course order, on a petition of right. | Order ..... | Impressed or adhesive. | |
| On an order for a commission on a petition of right. | Order ..... | Impressed. | |

### REGISTER OF JUDGMENTS AND LIS PENDENS.

| | Document to be stamped. | Character of Stamp to be used. | Regulations and Observations. |
|---|---|---|---|
| For registering a judgment or lis pendens ..... | Memorandum of registry. | Impressed. | Forms with the impressed stamp will be sold at the office of the Registrar of Judgments, Common Pleas Division. |
| For re-registering same ..... | | | |
| For a search ..... | General form of search præcipe. | | |
| For a certificate of entry of satisfaction. | Certificate ..... | | |
| For a certificate of a judgment for registration in Ireland or Scotland under the Judgments Extension Act, 1868, including affidavit. | Certificate. | Impressed or adhesive. | |
| On filing for registration a certificate issued out of Courts of Dublin or Court of Session in Scotland under the same act .. | | | |
| On every certificate of the entry of a satisfaction under the same act ..... | | | |
| For a search made in one or both of the registers of Irish and Scotch judgments. | Præcipe. | Impressed .. | Forms of Præcipe, with the impressed stamp, will be sold at the Inland Revenue Office, and by law stationers. |

MISCELLANEOUS.

| | Document to be stamped. | Character of Stamp to be used. | Regulations and Observations. |
|---|---|---|---|
| On a report of a private bill in Parliament. | Report ..... | Impressed. | |
| On an allowance of bye-laws or table of fees. | Allowance .... | Impressed. | |
| On a fiat of a judge..... | Fiat ..... | Impressed or adhesive. | |
| On signing an advertisement .. | Advertisement.. | Impressed. | |
| Upon a reference to a master of the Queen's Bench, Common Pleas, or Exchequer Divisions, for the purpose of any investigation or inquiry other than the taking of an account for which another fee is herein provided. | Certificate or other document used in giving the decision. | Impressed or adhesive. | |
| On taking acknowledgment of a deed by a married woman. | Acknowledgment. | Impressed .. | Forms with the impressed stamp will be sold at the Inland Revenue Office. |
| On taking a recognizance or bond. | Recognizance .. | Impressed or adhesive. | |
| On taking bail, and taking same off the file and delivering. | Bail piece .... | Impressed or adhesive. | |
| On a commitment ..... | Commitment .. | Impressed or adhesive. | |
| On an application to produce judges' notes. | Application .. | | |
| On appointment of Commissioners under glebe exchange. | Appointment .. | Impressed. | |
| On examining and signing inrolment of decrees and orders. | Inrolment .... | Impressed or adhesive. | Forms of admission with the impressed stamp will be sold at the Inland Revenue Office. |
| On admission or re-admission of a solicitor. | Admission .... | Impressed .. | |
| On a written request for information at the Chancery Pay Office. | Præcipe ..... | Impressed. | |
| For preparing a power of attorney at the Chancery Pay Office. | Power ..... | | |
| For transcript of an account in the books at the Chancery Pay Office. | Transcript .... | Impressed or adhesive. | |
| Any other proceeding, pleading or document, not hereinbefore specified. | Document or præcipe. | Impressed or adhesive. | These are to be impressed if practicable where not filed in the office. |

GENERAL DIRECTIONS.

In any case in which the use of impressed stamps is prescribed, paper or parchment on which the document requiring a stamp is to be written, may be stamped at the Inland Revenue Office, notwithstanding that stamped forms are also provided by the Commissioners of Inland Revenue.

The cancellation shall be effected in such manner as the Commissioners of Inland Revenue shall from time to time direct.

CRICHTON.
J. D. H. ELPHINSTONE.

I concur in this Order,
CAIRNS, C.

L.F.

II II

## SUBSIDIARY REGULATIONS, NOT MADE UNDER ANY STATUTE AND NOT BEING RULES OF THE SUPREME COURT.

I. *Payment into Court.*
II. *Actions for Administration.*
III. *Appeals from Inferior Courts.*
IV. *Transfers to Fry, J.*
V. *Writs for Service out of Jurisdiction.*
VI. *Chambers.*
VII. *Counsel's Summonses.*
VIII. *Opposed Motions in Exchequer.*
IX. *Order as to intituling Proceedings commenced in C. P. and Exch. Divisions.*
X. *Filing Stamps to Affidavits.*

### I. *Payment into Court.*

The following order was posted at the judges' chambers in Serjeants' Inn on November 12th, 1875:—"As money may now be paid into court without leave after service of the writ and before defence (Ord. XXX., Rule 2), summonses to stay on payment of a smaller sum demanded will no longer be issued. Instead thereof, the amount shall be paid into court, and the copy of the receipt sent to the plaintiff's solicitor."

### II. *Actions for Administration.*

The Clerks of Records and Writs invite attention to the following notice:—"Considerable confusion having arisen in actions for administration of an estate from the practice of adding after the issue of the writ a title, 'In the Matter of the Estate, &c.,' solicitors are requested, in all actions for administration, to entitle the writ in the following form:—

In the Matter of the Estate of A. B.
Between G. H.....Plaintiff,
and
R. S. .....Defendant.

It will thus be possible to index these actions in the cause book under the name of the estate to be administered.—Feb. 1876."

## III. *Appeals from Inferior Courts.*

The High Court of Justice.—Queen's Bench Division.

General Rules.

Two paper books only in cases in the crown paper are to be hereafter delivered.

It is ordered that the party entering a special case under Order 58, Rule 19, p. 263, at the Crown Office of the Queen's Bench Division, shall, four clear days before the day appointed for argument, deliver two copies of the case to the judges of the divisional court to which such case has been assigned for argument, at the judges' chambers in Rolls Gardens, Chancery Lane, such copies to be marked "For the use of the judges in the Queen's Bench (*Common Pleas or Exchequer* (*a*)) Division, and not with the name of any particular judge, and to be divided into paragraphs and numbered as in the special case. Such copies are to be forthwith forwarded to the proper divisions at Westminster.

It is ordered that motions under the 6th section of 38 & 39 Victoria, chapter 50, shall be made in the Queen's Bench (*Common Pleas or Exchequer*) Division of the High Court of Justice, only upon the days appointed by those divisions for hearing appeals from inferior courts, and no such motion shall be made by way of appeal from any county court unless a copy of the judge's notes, signed by the judge, shall have been handed to the proper officer in court, unless otherwise ordered.

By the Court.

22nd January, 1877.

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## IV. *Order of June,* 1877, *as to Transfer.*

The following Order was issued on 19th June, 1877:—

"I, the Right Hon. Hugh MacCalmont, Baron Cairns, Lord High Chancellor of Great Britain, do hereby order and direct as follows:—

"1. Each of the several causes which have been or shall be transferred to Mr. Justice Fry shall, until further order, be deemed to have been transferred to him for the purpose only of trial or of hearing.

"2. No cause or matter shall, until further order, be assigned to the said Mr. Justice Fry, by the same being marked by the plaintiff or petitioner with the name of the said Mr. Justice Fry.—Cairns, C."

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(*a*) Impliedly repealed by Order in Council of November, 1880, p. 438, *ante*.

## V. *Writs for Service out of the Jurisdiction.*

The following directions as to applications for leave to issue writs of service out of the jurisdiction, have been adopted by the judges of the Chancery Division :—

*Directions as to Applications for leave to issue Writs.*

1. No summons shall be issued.

2. The unsealed writ shall be left at the judge's chambers, with (if an affidavit is necessary) an office copy of the affidavit.

3. The judge's leave to issue the writ shall be given by order put on the writ thus :—

January 1, 1878.

Let this Writ be issued.

A. B.

(L.S.) Chief Clerk.

[*Here will be inserted any necessary directions as to service.*]

And a copy of such order shall be written on the copy writ filed with the record and writ clerks.

4. An affidavit (where an affidavit is necessary) shall be thus intituled :—

In the Matter of the Judicature Acts of 1873 and 1875.

In the Matter of an intended Action between A. B., Plaintiffs, and C. D., and others, Defendants.

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## VI. *Regulations for the Conduct of Business at the Judges' Chambers, November,* 1878 (*a*).

It is ordered that the following Regulations for the conduct of business at the Judges' Chambers, Rolls Gardens, Chancery Lane, take effect and be observed on and after the 11th November, 1878, until further order :—

1. All summonses for time only shall be made returnable at half-past ten o'clock, and be heard by the masters at eleven o'clock, in priority to the other business of the day.

2. All other summonses shall be made returnable at successive hours : such as are for hearing by the judge, commencing at eleven o'clock, if not attended by counsel, and if so attended, at two o'clock ; and such as are for hearing by the masters, commencing at half-past eleven o'clock.

No more than twenty judges' summonses, nor more than sixty masters' summonses, shall be made returnable at the same hour.

3. Every summons which the masters have not jurisdiction

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(*a*) These regulations are in great part re-enacted in an altered shape by Order LIV., Rules 7—14, made in April, 1880. They have not been abrogated, however, and may be useful as being more detailed. They do not appear to be made under any authority conferred by the Judicature Acts.

to hear shall, before it is issued, be entered in numerical order in the proper column of a printed list to be kept by such one of the judge's clerks as may, by arrangement between them, be appointed for that purpose, and in default of an arrangement, by each of the clerks in rotation for a week, commencing with the junior judge's clerk.

The list will contain two columns, one for summonses to be attended by counsel, and the other for summonses not so attended, with numbered lines, each commencing with No. 1.

4. Every summons, whether for hearing by the judge or the masters (other than a summons for time only), shall, before it is issued, be taken to the clerk in charge of the list, to have inserted thereon the hour of its return; and every judge's summons shall be numbered and marked according to its place in the list.

All summonses shall be returnable at the first hour at which the summons can be heard. No summons shall be made returnable at any later hour, unless the previous numbers are all filled up.

No summons which the masters have jurisdiction to hear shall be entered in the list.

5. If any respondent to a judge's summons not entered in the column for counsel be desirous of attending by counsel, he shall give notice thereof, before the hour of its return, to the opposite party, and to the clerk in charge of the list, who shall thereupon transfer the summons from the one column to the first vacant number in the other column.

6. The summonses in the judge's list shall be called on in their order. If neither party appears, the summons shall be passed over till the list for the hour has been gone through. The summonses passed over shall then be called on a second time in their order. If neither party then appears, it shall be struck out. If one party only appears, an order may be made *ex parte*, upon an affidavit of service, either granting or dismissing the application, as the case may be, and either with or without costs.

No affidavit of non-attendance shall be required or allowed, as regards any summons in the list.

7. When a summons has been struck out, the application shall not be heard except upon a second summons, to be issued only by leave of a judge.

8. If, when the counsel's list is called on, any summonses returnable at a previous hour should not have been disposed of, they shall stand adjourned till and be taken first on the following day, except such as both parties desire to be taken after the counsel's list shall have been exhausted.

9. *Ex parte* applications to the judge shall be heard at the close of the day, unless convenient intervals shall occur during the earlier hours.

10. No affidavit used at chambers shall be taken away

without the express leave of the judge or the master; but the same shall be delivered, duly stamped, to the doorkeeper, to be filed, whose duty it shall be to see that this order is complied with.

11. As early as practicable every afternoon a copy of the list for the following day shall be exhibited in a conspicuous place outside the judges' chambers. At the opening of the chambers on the following morning, a copy shall also be exhibited in each of the halls.

12. The clerk in charge of the list is authorized to receive and file written consents to orders and to adjournments, and he will correct the list for the day accordingly.

13. The judge and the masters will attend every day at 11 o'clock, and continue their sittings (as far as may be practicable) till the business is disposed of.

14. Solicitors are invited to bring their summonses ready filled up, and take them to the respective judges' clerks to be signed, and entered and marked, as above directed.

15. The order of business before the masters will for the present remain as before.

| | |
|---|---|
| A. E. COCKBURN. | C. E. POLLOCK. |
| COLERIDGE. | WILLIAM FIELD. |
| FITZROY KELLY. | J. W. HUDDLESTON. |
| JOHN MELLOR. | NATHL. LINDLEY. |
| ROBT. LUSH. | H. MANISTY. |
| ANTHONY CLEASBY. | H. HAWKINS. |
| W. R. GROVE. | HENRY C. LOPES. |
| GEORGE DENMAN. | |

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## VII. *Order of April 22nd, 1880, regulating Chamber Business.*

*Judges' Chambers.*] It is ordered by the judge that all parties attending summonses at judge's or master's chambers shall meet in room No. 81, on the ground floor, to ascertain their opponents, and then proceed to the Judges' Hall, on the court floor, to wait until their cases are called on. No calling out of names of cases or of opponents' names will be permitted in the Judges' Hall.

*Summonses to be heard by Counsel.*] Until further order, all summonses to be heard by counsel before the judge shall be returnable every day at two o'clock, except on Saturdays, on which day they shall be returnable at half-past twelve; and all summonses to be heard by counsel before the master, shall be returnable every day at one o'clock, except on Saturdays, on which days they shall be returnable at half-past twelve.

### VIII. *Order in the Exchequer Division.*

*Opposed Motions.*] It is ordered that one clear day before the day named in the notice of motion or rule nisi for hearing such motion, the party moving shall enter the motion at the rule office, and leave there a copy of the notice of motion or rule nisi, and any orders, pleadings, or other documents relating to the motion; and shall also, on the same day, bespeak to be in court either on that or the following day. All original affidavits required to be used on the hearing, and such motions shall be heard in the order in which they are so set down.

5th March, 1880. By the Court (*a*).

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### IX. *Order as to intituling Proceedings commenced in Common Pleas and Exchequer Divisions.*

By an Order in Council, which came into force on the 26th of February, 1881, the three Common Law Divisions were consolidated into one, to be called the Queen's Bench. And it was further ordered that all pending proceedings of every kind "be continued, carried on, and completed in the Queen's Bench Division." In accordance with the above Order solicitors are requested to alter the title of such proceedings as have been commenced in the Common Pleas or Exchequer as follows:—In the High Court of Justice, Queen's Bench Division.—Writ issued in the Common Pleas *or* Exchequer Division.

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### X. *Affidavits—Notice to Solicitors.*

No affidavit will be allowed to be read or referred to before the judge or Master in chambers unless the filing stamp has been affixed and cancelled by the proper officer (in chambers) prior to the parties going into the judge's room.

[*From the Weekly Notes of March 5th*, 1881.]

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(*a*) This practice has been followed in a divisional court (Pollock, B., and Stephen, J.), since the operation of the consolidating Order in Council (February 28, 1881).

# FORM OF APPEAL.

# METHOD OF PROCEDURE,

AND

# STANDING ORDERS.

*Applicable to all Appeals presented to the House of Lords on and after the 1st day of November,* 1876.

[Issued in August, 1876, under Act of 1876, s. 11, p. 97, and here printed, as slightly amended in December, 1876.]

Form of Appeal (Standing Order, No. I.)

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled.

The humble petition and appeal of A.

Your petitioner humbly prays that the matter of the order (or orders, or judgment, or interlocutor) set forth in the schedule hereto (*a*) (or, so far as therein stated to be appealed against) may be reviewed before her Majesty the Queen in her court of parliament, and that the said order (or, so far as aforesaid) may be reversed, varied, or altered, or that the petitioner may have such other relief (if specific relief be desired, it can be so stated in the prayer) in the premises as to her majesty the Queen, in her court of parliament, may seem meet; and that (here name the respondents) may be required to lodge such printed cases as they may be advised, and the circumstances of the cause may require, in answer to this appeal; and that service of such order on the solicitors in the cause of the said respondents may be deemed good service.

To be signed by two counsel.

Standing Order, No. II. (Certificate of Counsel).

(*Here insert schedule.*)

FORM OF SCHEDULE.

"From her Majesty's Court of Appeal (England).

"In a certain cause (or matter) wherein A. was plaintiff and B. was defendant.

"The order appealed from is in the words following, viz. (*set forth order complained of in italics*), or, the order referred to in the above prayer is in the words following, the portion appealed from being printed in italics (set forth order, the portion complained of being printed in italics; *the portion not complained of being printed in roman type*)."

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(*a*) The schedule must set out the title of the parties to the cause or matter; and the decrees, orders, judgments, or interlocutors appealed against; and where the appeal is not against the whole decree, the part appealed against must be defined.

We humbly conceive this to be a proper case to be heard before your lordships by way of appeal.

*Appeal to House of Lords.*

To be signed by two counsel.

I, , clerk to Messrs. , of , solicitors for the appellants within named, hereby certify that on the day of , I served Messrs. , of , solicitors for , the within-named respondents, with a correct copy of the foregoing appeal, and with a notice that, on the day of , or as soon after as conveniently may be, the petition of appeal would be presented to the house of lords on behalf of the appellant (*b*).

Standing Order, No. II.

Notice to respondents.

## DIRECTIONS FOR AGENTS.

### *Method of Procedure.*

In accordance with the foregoing notice, the appeal, printed on parchment (quarto size), in such form as will enable paper copies thereof to be hereafter bound up with the printed cases, is to be lodged in the parliament office for presentation to the house, and (if the house be then sitting, or, if not, on the next ensuing meeting of the house) an order thereon for service on the respondents, or their solicitors, ordering the respondents to lodge cases in answer to the appeal, will be issued to the appellant's agent, such order, together with an affidavit of due service entered thereon, to be returned to the parliament office within the period granted to the appellant for lodging his printed case under Standing Order No. V.

Presentation of the appeal.

Order of service,—*see* Standing Order, No. III.

Each appellant, where there are more than one, is required to enter into the recognizance. The appellants are required to submit to the clerk of the parliaments within one week after the date of the presentation of the appeal (unless the sum of two hundred pounds, as required by the standing order, be paid to the receiver of fees to the parliament office for payment into the fee fund of the house of lords (*c*)) the names of the sureties who propose entering into the bond; and, in the event of a substitute being proposed to enter into the recognizance in lieu of the appellants, the name of such substitute. Two clear days' previous notice of the names so proposed (for bond and recognizance) is to be given to the solicitor or agent of the respondents, and at the time of submitting the said names to the clerk of the parliaments a certificate from the solicitor or agent of the appellants is to be lodged in the parliament office, certifying his belief in the sufficiency of the sureties and substitutes so proposed. At the termination of one week from the lodgment of such certificate, the bond and recognizance are to be issued to the solicitor or agent of the appellants for execution before a commissioner appointed to administer oaths in the Supreme Court of Judicature in England, or a commissioner appointed to administer oaths in Chancery in Ireland, or before a justice of the peace in Scotland. The bond and the recognizance (whether entered into by the appellants or by a substitute) to be returned to

Security for costs,—*see* Standing Order, No. IV.

(*b*) The notice to respondents is to be written on the last page of the appeal. Not less than two clear days' notice to be given of the intention to present an appeal.

(*c*) All drafts and cheques to be made payable to "House of Lords Fee Fund," and to be crossed, "Bank of England Western Branch."

*Appeal to House of Lords.*

the parliament office within one week from the date of the issue thereof to the solicitor or agent of the appellants.

The solicitors of those respondents who purpose lodging printed cases in answer to the appeal should attend at the parliament office for the purpose of ascertaining the due execution of the recognizance and bond, and entering their names in the appearance book. (Notice of the meeting of the appeal committee is only sent to the solicitors of respondents who have thus signified their appearance in the cause.)

Printed cases and Appendix, and "setting down" cause for hearing,—*see* Standing Order, No. V.

In English appeals six weeks' time, and in Irish and Scotch appeals eight weeks' time, from the date of the presentation of the appeal, is granted to all parties to lodge printed cases and the appendices thereto (*d*).

In appeals in which the parties are able to agree in their statement of the subject-matter, it is optional to lodge a joint case with reasons *pro* and *con*, following the practice heretofore in use in common law appeals on a special case.

Appendix.

It is obligatory on the appellant, within the respective periods so limited as above, to lodge his printed cases, or the joint case before mentioned, and a printed appendix consisting of such documents, or parts thereof, used in evidence in the court below, as may be necessary for reference on the argument of the appeal.

It is the duty of the appellant, with as little delay as possible after the presentation of the appeal, to furnish to the respondent a list of the proposed documents, and in due course a proof copy of the appendix. The proof is to be examined with the original documents by the respective solicitors of the parties. (Ten copies of the appendix, as soon as printed, to be delivered to the solicitor of the respondent.) The respondent is allowed to print any additional documents, used in evidence in the court below, which may be necessary for the support of his case on the argument of the appeal, such documents to be paged consecutively with the appendix. (The proof to be examined, as aforesaid, by the respective solicitors, and prints delivered to the solicitor of the appellant.)

The costs incurred in printing the appendix will, in the first instance, be borne by the appellant, and the cost of the additional documents by the respondent, but these costs will ultimately be subject to the decision of the house with regard to the costs of the appeal.

Signature of counsel to case,—*see* Standing Order, No. V.

The case and appendix must be printed quarto size, with seven or eight letters in the margin for facilitating reference, and should be submitted in proof to the clerks in the judicial office. Forty copies of the case and appendix are required to be lodged in the parliament office; and subsequently, on the lodgment of the respondent's case, ten bound copies. (See directions in the appendix hereto as to binding printed cases.)

Where reference is made to a document printed in the appendix, the case must contain a marginal note of the page of the appendix containing such document.

There is no penalty on respondents who do not lodge their printed cases within the time limited by Standing Order No. V., but respondents can only appear at the bar on a printed case.

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(*d*) Petitions for extension of time, lodged during the recess, do not prevent the dismissal of an appeal. (For form of petition see Appendix C.)

*Appeal to House of Lords.*

As soon as the printed cases of all parties and the appendix thereto have been lodged, it is optional for either side to set down the cause for hearing, but it is obligatory on the appellant, upon the lodgment of his printed cases and the appendix, to set down the cause for hearing within the time limited by Standing Order No. V. (ex parte as to those respondents who have not already lodged printed cases, upon proof, by affidavit, of the due service of the before-mentioned "order of service" upon the respondents or their solicitors). A respondent who has lodged his printed cases is at liberty to set down the cause for hearing on the first sitting day after the expiration of the time limited by the standing order for lodging printed cases.

The cause will then be ripe for hearing, and will take its position on the effective cause list.

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STANDING ORDERS APPLICABLE TO ALL APPEALS PRESENTED TO THE HOUSE OF LORDS ON OR AFTER THE 1ST DAY OF NOVEMBER, 1876.

STANDING ORDER I.

Time limited for presenting appeals.

Ordered, that, except where otherwise provided by statute, no petition of appeal be received by this house unless the same be lodged in the parliament office for presentation to the house within one year from the date of the last decree, order, judgment, or interlocutor appealed from.

Applicable to all decrees, &c. pronounced on and after the 1st day of November, 1876.

In cases in which the person entitled to appeal be within the age of twenty years, or covert, non compos mentis, imprisoned, or out of Great Britain and Ireland, such person may be at liberty to present his appeal to the house, provided that the same be lodged in the parliament office within one year next after full age, discoverture, coming of sound mind, enlargement out of prison, or coming into Great Britain or Ireland. But in no case shall any person or persons be allowed a longer time, on account of mere absence, to present an appeal, than five years from the date of the last decree, order, judgment, or interlocutor appealed against.

STANDING ORDER II.

Appeals to be signed and certified by counsel.

Ordered, that all petitions of appeal be signed, and the reasonableness thereof certified, by two counsel who shall have attended as counsel in the court below, or shall purpose attending as counsel at the hearing in this house.

STANDING ORDER III.

"Order of service."

Ordered, that the "order of service" issued upon the presentation of an appeal for service on the respondent or his solicitor, be returned to the parliament office, together with an affidavit of due service entered thereon, within the time limited for the appellant to lodge his printed cases, unless within that period all the respondents shall have lodged their printed cases; in default, the appeal to stand dismissed.

STANDING ORDER IV.

Recognizance.

Ordered, in all appeals that the appellant or appellants do give security to the clerk of the parliaments by recognizance to be entered into, in person or by substitute, to the Queen of the penalty of five hundred pounds, conditioned to pay to the respon-

*Appeal to House of Lords.*

dent or respondents all such costs as may be ordered to be paid by the house in the matter of the appeal; and further, that the appellant or appellants do procure two sufficient sureties, to the satisfaction of the clerk of the parliaments, to enter into a joint and several bond to the amount of two hundred pounds, or do pay in to the account of the fee fund of the house of lords the sum of two hundred pounds; such bond, or such sum of two hundred pounds, to be subject to the order of the house with regard to the costs of the appeal: Ordered, that within one week after the presentation of the appeal the appellant or appellants do pay in to the account of the fee fund of the house of lords the said sum of two hundred pounds, or submit to the clerk of the parliaments the names of the sureties proposed to enter into the said bond; and, in the event of a substitute being proposed to enter into the said recognizance, the name of such substitute; two clear days' previous notice of the names so proposed for bond and recognizance to be given to the solicitor or agent of the respondent: Ordered, that the said bond and the recognizance (whether entered into by the appellants or by a substitute) be returned to the parliament office, duly executed, within one week from the date of the issue thereof to the solicitor or agent of the appellant or appellants. On default by the appellant or appellants in complying with the above conditions, the appeal to stand dismissed.

## STANDING ORDER V.

Printed cases, time limited for lodging, and for setting down the cause for hearing.

1. Ordered, that in English appeals the printed cases and the appendix thereto be lodged in the parliament office within six weeks from the date of the presentation of the appeal to the house; in Scotch and Irish appeals, within eight weeks; and the appeal set down for hearing on the first sitting day after the expiration of those respective periods (or as soon before, at the option of either party, as all the printed cases and the appendix shall have been lodged); on default by the appellant the appeal to stand dismissed.

Scotch appeals.

2. Ordered, that in all appeals from Scotland the appellant alone, in his printed case or in the appendix thereto, shall lay before this house a printed copy of the record as authenticated by the Lord Ordinary: together with a supplement containing an account, without argument or statement of other facts, of the further steps which have been taken in the cause since the record was completed, and containing also copies of the interlocutors or parts of interlocutors complained of; and each party shall in their cases lay before the house a copy of the case presented by them respectively to the Court of Session, if any such case was presented there, with a short summary of any additional reasons upon which he means to insist; and if there shall have been no case presented to the Court of Session, then each party shall set forth in his case the reasons upon which he founds his argument, as shortly and succinctly as possible.

Printed cases to be signed by counsel.

3. Ordered, that all printed cases be signed by one or more counsel, who shall have attended as counsel in the court below, or shall purpose attending as counsel at the hearing of this house.

## STANDING ORDER VI.

Cross appeals.

Ordered, that all cross appeals be presented to the house within the period allowed by Standing Order No. V. for lodging cases in the original appeal.

*Appeal to House of Lords.*

### STANDING ORDER VII.

Expiry of time during recess.

Ordered, with regard to appeals in which the periods severally dating from the presentation of the appeal under Standing Orders Nos. III., IV., V., and VI. expire during the recess of the house, that such periods be extended to the third sitting day of the next ensuing meeting of the house.

### STANDING ORDER VIII.

Supplemental cases to be delivered in where appeals are revived or parties added.

Ordered, that where any party or parties to an appeal shall die pending the same, subsequently to the printed cases having been lodged, and the appeal shall be revived against his or her representative or representatives as the person or persons standing in the place of the person or persons so dying as aforesaid, a supplemental case shall be lodged by the party or parties so reviving the same respectively, stating the order or orders respectively made by the house in such case.

The like rule shall be observed by the appellant and respondent respectively, where any person or person, party or parties in the court below, have been omitted to be made a party or parties in the appeal before this house, and shall, by leave of the house, upon petition or otherwise, be added as a party or parties to the said appeal after the printed cases in such appeal shall have been lodged.

### STANDING ORDER IX.

Scotch appeals.

Certificate of leave or difference of opinion to be signed by counsel on appeals.

Ordered, that when any petition of appeal shall be presented to this house from any interlocutory judgment of either division of the lords of session in Scotland, the counsel who shall sign the said petition, or two of the counsel for the party or parties in the court below, shall sign a certificate or declaration, stating either that leave was given by that division of the judges pronouncing such interlocutory judgment to the appellant or appellants to present such petition of appeal, or that there was a difference of opinion amongst the judges of the said division pronouncing such interlocutory judgment.

### STANDING ORDER X.

Taxation of costs.

Ordered, that in all cases in which this house shall make any order for payment of costs by any party or parties in any cause without specifying the amount, the clerk of the parliaments or clerk assistant shall, upon the application of either party, appoint such person as he shall think fit to tax such costs, and the person so appointed may tax and ascertain the amount thereof, and shall report the same to the clerk of the parliaments or clerk assistant: And it is further ordered, that the same fees shall be demanded from and paid by the party applying for such taxation for and in respect thereof as are now or shall be fixed by any resolution of this house concerning such fees; and the said person so appointed to tax such costs may, if he thinks fit, either aid or deduct the whole or a part of such fees at the foot of his report: And the clerk of the parliaments or clerk assistant may give a certificate of such costs, expressing the amount so reported to him as aforesaid; and the amount in money certified by him in such certificate shall be the sum to be demanded and paid under or by virtue of such order as aforesaid for payment of costs.

*Appeal to House of Lords.*

## APPENDIX (A).

(*Certificate of Sufficiency of Sureties, &c.*)

Lodged in the Parliament office on the day of 18 .

In the House of Lords.

"A. and others *v.* B. and others."

In compliance with Standing Order No. IV., [we] submit the names of [full name] of [address] and [full name] of [address] { as fit and proper sureties / or, as a fit and proper substitute } to enter into the { bond / recognizance } thereby required: and I [we] certify in { my / our } belief, that the said [full name] and the said [full name] { are each / is } worth upwards of { £200 / £500 } over and above { their / his } just debts.

This certificate may be signed by the country solicitor or agent of the appellants.

I [we] certify that a copy of the above certificate and two clear days' notice of the intention to lodge the same in the parliament office has been served on the solicitors or agents of the respondents.

To be signed by the London solicitor or agent of the appellants.

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## APPENDIX (B).

(*Directions for binding Printed Cases for the use of the Law Lords.*)

1. Ten copies bound in purple cloth; two of the ten to be interleaved, as regards the cases only.
2. Short title of cause on the back.
3. Label on side, stating short title of cause and contents of the volume, thus:—

"A. and others *v.* B. and others."
Printed copy of the appeal.
Appellants' case.
Respondent B.'s case.
Respondent C.'s case.
Appendix.

4. The volume to be indented, and the names of the parties written on the indentations to their respective cases.
5. References to the reports of the cause in the courts below, or the words "Not reported," to be written on the fly sheet.
6. The bound copies to be lodged immediately after the respondent's cases are delivered in.

The agents are requested to use their discretion as to the size of the volume, arrangement of the cases, and appendix. In dealing with bulky cases, it may be found advisable to bind the appendix as a separate volume, and also to divide the appellants' and respondents' cases into separate volumes.

It is the duty of the appellants' agent to carry out these directions.

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## APPENDIX (C).

*(Petition for Extension of Time to lodge Cases, &c.)*

[To be engrossed on foolscap paper, and (unless assent of respondent's agent be obtained), a copy, and two clear days' notice of intention to present, to be given to respondent's agent.]

In the House of Lords. [Insert short title of cause.]

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled.

The humble petition of the appellant

Showeth, That your petitioner presented petition of appeal on the day of complaining of [insert dates of orders or interlocutors complained of].

That the time allowed by Standing Order No. V. ([or] extended by your lordships' order of the [state date]) for the appellant to lodge his printed cases and the appendix, will expire on the [state date].

That your petitioner [set forth cause of delay].

Your petitioner therefore humbly prays that your Lordships will be pleased to grant him [set forth time required] further time to lodge his printed cases, and the appendix, and set down the cause for hearing. And your petitioner will ever pray.

——— Agents for the appellant.

We consent to the prayer of the above petition,

——— Agents for the respondent.

# STATUTE LAW INCORPORATED IN THE JUDICATURE ACTS.

I. Costs and Remission of Actions to County Court.
30 & 31 Vict. c. 142, ss. 5, 7, 8, 10.
II. Interpleader.
1 & 2 Will. 4, c. 58.
23 & 24 Vict. c. 126, ss. 12—18.
III. Parties in Administration and Trust Actions.
15 & 16 Vict. c. 86, s. 42.
IV. Charging of Stock and Distringas.
1 & 2 Vict. c. 110, ss. 14, 15.
3 & 4 Vict. c. 82, s. 1.
5 Vict. c. 5, ss. 4, 5.

## I.

### Costs and Remission of Actions to County Court.

[30 & 31 Vict. c. 142, ss. 5, 7, 8, 10.]

*An Act to amend the Acts relating to the Jurisdiction of the County Courts.* [20th August, 1867.]

(Applied by s. 67 of Judicature Act, 1873, p. 50, to all actions commenced in the High Court "in which any relief is sought which can be given in a County Court.")

Certificate for costs in High Court where no more than 20*l.* in contract or 10*l.* in tort recovered.

5. If in any action commenced after the passing of this act, in any of her Majesty's superior courts of record, the plaintiff shall recover a sum not exceeding twenty pounds if the action is founded on contract, or ten pounds, if founded on tort, whether by verdict, judgment by default or on demurrer, or otherwise, he shall not be entitled to any costs of suit unless the judge certify on the record that there was sufficient reason for bringing such action in such superior court, or unless the court or a judge at chambers shall by rule or order allow such costs.

Read with section 67 of the Act of 1873, and with Order LV., this section in effect enacts that in any action in which the County Court has a concurrent jurisdiction to grant relief—whatever be the amount claimed—with the High Court, the plaintiff if he recover less than the amounts specified in this section—whether by a verdict of a jury or not—shall be deprived of his costs unless they be specially allowed to him by the Court.

*County Court Act*, 1867, *s.* 5.

*Contract or Tort.*] An action against a cab proprietor for loss of luggage is founded on contract (*Baylis* v. *Lintott*, L. R., 8 C. P. 345; 42 L. J., C. P. 345; 28 L. T. 66), and so is an action against a common carrier for non-delivery of goods (*Fleming* v. *M. S. & L. R. Co.* (C. A.), 4 Q. B. D. 81; 39 L. T. 555; 27 W. R. 481, reversing S. C., 26 W. R. 741); but an action against a common carrier for loss of goods by refusal to stop in transitu is founded on tort (*Pontifex* v. *Midland Railway Co.*, 3 Q. B. D. 23; 47 L. J., Q. B. 28; 37 L. T. 403; 26 W. R. 209), and so is an action in detinue (*Bryant* v. *Herbert* (C. A.), 3 C. P. D. 389; 47 L. J., C. P. 670; 39 L. T. 17; 26 W. R. 898, reversing S. C., 3 C. P. D. 189).

"*Whether by Verdict, &c. or otherwise.*"] It is settled that these words comprehend a balance recovered after deducting a set-off (see *Ashcroft* v. *Foulkes*, 18 C. B. 261), or a payment into court (*Pontifex* v. *Midland Railway Co.*, *ubi supra*; *Parr* v. *Lillicrap*, 1 H. & E. 615); but the decisions are conflicting as to whether they comprehend a balance recovered after deducting a successful counter-claim. In *Staples* v. *Young* (2 Ex. D. 324; 25 W. R. 304), it was held that a plaintiff claiming 26*l.* 13*s.*, whose claim was reduced by a counter-claim sounding in damages for 23*l.* 1*s.* 6*d.* being proved by the defendant, recovered judgment for the balance only, and not having a certificate, lost his costs. But in *Stooke* v. *Taylor* (5 Q. B. D. 569; 49 L. J., Q. B. 857), where an arbitrator awarded 35*l.* to the plaintiff and 20*l.* to the defendant, it was held (Field, J., *diss.*), that the plaintiff was entitled to the costs of his claim and the defendant to the costs of his counter-claim.

In *Chatfield* v. *Sedgwick* (4 C. P. D. 459; 27 W. R. 790), the plaintiff claimed in contract more than 50*l.*, and the defendant counter-claimed, in addition to a set-off, less than 50*l.* A master certified a balance in favour of the defendant, amounting to less than 20*l.*, and the Court of Appeal held that the defendant was entitled to the costs of the reference.

*Stooke* v. *Taylor* is the latest authority on the subject.

In *Blake* v. *Appleyard* (3 Ex. D. 195; 47 L. J., Ex. 407), where the plaintiff recovered 40*l.*, and the defendant 10*l.* in tort, the defendant was allowed to tax the costs of his counter-claim, on the ground that the section under review does not apply to defendants.

The recovery of the amounts specified by a reference is within the section (see *Smith* v. *Edge*, 33 L. J., Ex. 9; *Cowell* v. *Amman Colliery Co.*, 34 L. J., Q. B. 161; *Moore* v. *Watson*, L. R., 2 C. P. 314); and a referee to whom an action is referred "with all the powers of certifying of a judge," even if he may certify for costs at all, which is doubtful (*Bedwell* v. *Wood*, 3 Q. B. D. 627; *Wigens* v. *Cook*, 28 L. J., C. P. 315), and who certainly without such express powers cannot certify, must give his certificate with his award, and not afterwards. (*Bedwell* v. *Wood*, *ubi supra*.) The discretion, however, which the referee generally has as to costs dispenses with the necessity of a certificate so far as the costs of the reference are concerned (*Galatti* v. *Wakefield* (C. A.), 4 Ex. D. 249), although it may be otherwise where the reference is compulsory. (*Moore* v. *Watson*, L. R., 2 C. P. 314, distinguished, but questioned in *Galatti* v. *Wakefield*.)

*Application of sect.* 5.] This section has been held to apply to actions, *e. g.*, slander, where a plaintiff could not have legally sued in a county court (*Gray* v. *West*, L. R., 4 Q. B. 175; 38 L. J., Q. B. 78); but sect. 67 of the Act of 1873 has got rid of the effect of that decision (see *Garnett* v. *Bradley*, 3 App. Cas. at p. 271); and also to an action removed by the defendant from the Mayor's Court, London, by certiorari (*Pellas* v. *Breslauer*, L. R., 6 Q. B. 438; 40 L. J., Q. B. 161; 24 L. T. 762), or from a county court by the defendant availing himself of 19 & 20 Vict. c. 108, s. 26 (*Flitters* v. *Allfrey*,

L. R., 10 C. P. 29; 44 L. J., C. P. 73; 31 L. T. 881)—which two latter decisions are not yet got rid of.

*Judge of inferior court may certify.*] The judge of a county court, in a case sent down under 19 & 20 Vict. c. 108, s. 26, may give a certificate entitling the plaintiff to costs (*Taylor* v. *Cass*, L. R., 4 C. P. 614; 20 L. T. 667; 17 W. R. 860), and so may an under-sheriff upon a writ of inquiry (*Craven* v *Smith*, L. R., 4 Ex. 146).

*Review of discretion of judge.*] The court may (see *Sampson* v. *Mackay*, L. R., 4 Q. B. 643; *Hinde* v. *Shepherd*, L. R., 7 Ex. 21; 25 L. T. 500), but usually will not (see *Hatch* v. *Lewis*, 31 L. J., Ex. 26; 7 H. & N. 367; *Strachey* v. *Osborne*, L. R., 10 C. P. 92; 44 L. J., C. P. 6; 31 L. T. 375), review the discretion of the judge.

*Admiralty.*] The 67th section of the Act of 1873 makes no mention of sect. 9 of the Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), which provides that if any person shall take in the High Court of Admiralty proceedings which he might without agreement have taken in a county court, and shall not recover a sum exceeding the amount to which the jurisdiction of the county court in that Admiralty cause is limited by that act, he shall not be entitled to costs unless the judge before whom the cause is tried "shall certify that it was a proper Admiralty cause to be tried in the High Court of Admiralty of England or in a superior court;" but sect. 9 of the Act of 1868 is impliedly repealed by the proviso of Ord. LV. (*Tennant* v. *Ellis*, 6 Q. B. D. 48; 50 L. J., Q. B. 143; 43 L. T. 506.)

*Slander and trespass.*] The acts 21 Jac. 1, c. 16, s. 6, and 3 & 4 Vict. c. 24, which deprived a plaintiff of his costs in slander and trespass if less than 40*s.* should be recovered, and which were unaffected by the County Courts Act, 1867 (*Marshall* v. *Martin*, L. R., 5 Q. B. 239; 39 L. J., Q. B. 85), are repealed by the Civil Procedure Acts Repeal Act, 1879, which statute also repeals the statutes of Gloucester, 6 Edw. 1, c. 1, which first gave a successful plaintiff a right to costs, and c. 8, which prohibited actions for sums less than 40*s.*

*Action for sum below* 10*l.*] By Ch. Cons. Ord. IX., Rule 1, it is provided that "every suit, the subject-matter of which is under the value of 10*l.*, shall be dismissed, unless it be instituted to establish a general right, or unless there be some other special circumstance, which, in the opinion of the court, shall make it reasonable that such suit should be retained." This order was made at a time when the equitable remedies of the Court of Chancery were obtained as a matter of favour on prayer; whereas the Chancery Division is now part of the Supreme Court, and its remedies are matter of "claim." It would seem to follow that a plaintiff in that division is now entitled, subject to the law as to costs and security, to have any cause, however small, tried there, as in other divisions of the High Court; and that Ch. Cons. Ord. IX., Rule 1, is inconsistent with, and therefore abrogated by, the new system; but the point is open to considerable doubt.

Order for trial in county court of actions of contract.

**7.** Where, in any action of contract brought or commenced in any of her Majesty's superior courts of common law, the claim indorsed on the writ does not exceed fifty pounds, or where such claim, though it originally exceeded fifty pounds, is reduced by payment, an admitted set-off, or otherwise, to a sum not exceeding fifty pounds, it shall be lawful for the defendant in the action, within eight days from the day upon which the writ shall have been served upon him, if the whole or part of the demand of the plaintiff be contested, to apply to a judge at chambers for a summons to the plaintiff to show cause why such action should

[*Compare s.* 26 *of County Court Act*, 1856, *p.* 537, *post.*]

*County Court Act*, 1867, *ss.* 7, 8.

not be tried in the county court, or one of the county courts, in which the action might have been commenced; and on the hearing of such summons the judge shall, unless there be good cause to the contrary, order such action to be tried accordingly, and thereupon the plaintiff shall lodge the original writ and the order with the registrar of the county court mentioned in the order, who shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise by the registrar to both parties or their attorneys, and the cause and all proceedings therein shall be heard and taken in such county court as if the action had been originally commenced in such county court; and the costs of the parties in respect of proceedings subsequent to the order of the judge of the superior court shall be allowed according to the scale of costs in use in the county courts, and the costs of the proceedings previously had in the superior court shall be allowed according to the scale in use in such latter court.

See further s. 26 of Act of 1856, and note, *post*, p. 537.

The right of the plaintiff to sue in the High Court is absolute if he offer sufficient security, and it is only upon failure to give security that the judge has power to consider the fitness of the case for the High Court. An action cannot be remitted where the claim is reduced below fifty pounds after action brought. (*Foster* v. *Usherwood* (C. A.), 3 Ex. D. 1; 47 L. J., Ex. 30; 37 L. T. 389; 26 W. R. 94, approving *Osborne* v. *Homburg*, 1 Ex. D. 48; 45 L. J., Ex. 65; 33 L. T. 534; 24 W. R. 161.) Even by consent of the parties. (*Foster* v. *Usherwood*, *supra*.) Nor where the claim on the writ is for 50*l*. and interest from date of writ until payment or judgment. (*Insley* v. *Jones*, 4 Ex. D. 16; 48 L. J., Ex. 222; 27 W. R. 111.) A judge in dismissing an appeal from a master refusing an application to remit may not impose the condition that "if only 50*l*. be recovered, the plaintiff to be only entitled to county court costs." (*Ibid.*) When the action has once been referred, the High Court has no jurisdiction over it so as to make an order to tax. (*Moody* v. *Steward*, L. R., 6 Ex. 35; 40 L. J., Ex. 25; 23 L. T. 465; 19 W. R. 161.)

Transfer of equitable proceedings to county court.

**8.** Where any suit or proceeding shall be pending in the High Court of Chancery, which suit or proceeding might have been commenced in a county court, it shall be lawful for any of the parties thereto to apply at chambers to the judge to whose court the said suit or proceeding shall be attached, to have the same transferred to the county court, or one of the county courts in which the same might have been commenced, and such judge shall have power upon such application or without such application, if he shall see fit, to make an order for such transfer, and thereupon such suit or proceeding shall be carried on in the county court to which the same shall be ordered to be transferred, and the parties thereto shall have the same right of appeal that they would have had had the suit or proceeding been commenced in the county court.

See *Linford* v. *Gudgeon*, L. R., 6 Ch. 359; 40 L. J., Ch. 514; 19 W. R. 577.

Order for trial of actions of tort in county court.

**10.** It shall be lawful for any person against whom an action for malicious prosecution, illegal arrest, illegal distress, assault, false imprisonment, libel, slander, seduction, or other action of tort may be brought in a superior court, to make an affidavit that the plaintiff has no visible means of paying the costs of the defendant should a verdict be not found for the plaintiff, and thereupon a judge of

*Incorporated Statutes. County Court Act*, 1867, *s.* 10.

the court in which the action is brought shall have power to make an order, that unless the plaintiff shall, within a time to be therein mentioned, give full security for the defendant's costs to the satisfaction of one of the masters of the said court, or satisfy the judge that he has a cause of action fit to be prosecuted in the superior court, all proceedings in the action shall be stayed, or in the event of the plaintiff being unable or unwilling to give such security, or failing to satisfy the judge as aforesaid that the cause be remitted for trial before a county court to be therein named; and thereupon the plaintiff shall lodge the original writ and the order with the registrar of such county court, who shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise by the registrar to both parties or their attorneys, and the county court so named shall have all the same powers and jurisdiction with respect to the cause as if both parties had agreed by a memorandum signed by them that the said county court should have power to try the said action, and the same had been commenced by plaint in the said county court; and the costs of the parties in respect of the proceedings subsequent to the order of the judge of the superior court shall be allowed according to the scale of costs in use in the county courts, and the costs of the proceedings in the superior court shall be allowed according to the scale in use in such latter court.

The effect of sections 7, 8, and 10 is that all actions of contract, the claim in which does not exceed 50*l.*, all torts and equity suits and proceedings which might have been commenced in a county court may be referred to a county court. Sect. 67 of the Act of 1873 imposes the further condition, that the relief can be given in the county court. An action of trover may be remitted under this section (*Clapham* v. *Oliver*, 30 L. T. 365; 22 W. R. 655.) And a master has jurisdiction under it. (*Walsh* v. *Smith*, 30 L. T. 304; 22 W. R. 576); and see Ord. LIV., Rule 2, p. 246, *ante*.) The order to remit may be refused without requiring a counter-affidavit from the plaintiff. (*Cozwell* v. *London General Omnibus Co.*, 27 W. R. 381.) The court may, but usually will not, reverse the order of the master or judge. (*Jennings* v. *London General Omnibus Co.*, 30 L. T. 266; *Rippon* v. *Joyce*, 31 L. T. 475.) The judge of the county court is bound to obey the order. (See *Blades* v. *Lawrence*, L. R., 9 Q. B. 374; 43 L. J., Q. B. 133; 30 L. T. 378; 22 W. R. 643.) On appeal from the order, the affidavit that the plaintiff has no visible means of subsistence must be brought before the court. (*Holmes* v. *Mountstephen*, L. R., 10 C. P. 474; 33 L. T. 351.)

As to extension of time for giving security, see *Welply* v. *Buhl* (C. A.), 3 Q. B. D. 253; 47 L. J., Q. B. 151; 38 L. T. 115; 26 W. R. 300. Affirming, S. C., 3 Q. B. D. 80.

## II.

### INTERPLEADER.

[1 & 2 WILL. 4, c. 58.]

*An Act to enable Courts of Law to give Relief against adverse Claims made upon Persons having no Interest in the Subject of such Claims.* [20th October, 1831.]

(Incorporated by Ord. I., Rule 2, p. 123.)

WHEREAS it often happens that a person sued at law for the recovery of money or goods wherein he has no interest, and which are also claimed of him by some third party, has no means of relieving himself from such adverse claims but by a suit in equity against the plaintiff and such third party, usually called a bill of interpleader, which is attended with expense and delay; for remedy thereof be it enacted, &c., that upon application made by or on the behalf of any defendant sued in any of his Majesty's courts of law at Westminster, or in the Court of Common Pleas of the county palatine of Lancaster, or the Court of Pleas of the county palatine of Durham, in any action of assumpsit, debt, detinue or trover, such application being made after declaration, and before plea, by affidavit or otherwise, showing that such defendant does not claim any interest in the subject-matter of the suit, but that the right thereto is claimed or supposed to belong to some third party who has sued or is expected to sue for the same, and that such defendant does not in any manner collude with such third party, but is ready to bring into court or to pay or dispose of the subject-matter of the action in such manner as the court (or any judge thereof) may order or direct, it shall be lawful for the court, or any judge thereof, to make rules and orders calling upon such third party to appear and to state the nature and particulars of his claim, and maintain or relinquish his claim, and upon such rule or order to hear the allegations as well of such third party as of the plaintiff, and in the meantime to stay the proceedings in such action, and finally to order such third party to make himself defendant in the same or some other action, or to proceed to trial on one or more feigned issue or issues, and also to direct which of the parties shall be plaintiff or defendant on such trial, or, with the consent of the plaintiff and such third party, their counsel or attornies, to dispose of the merits of their claims and determine the same in a summary manner, and to make such other rules and orders therein as to costs and all other matters as may appear to be just and reasonable.

Application by defendant not claiming interest, and showing claim by third party as well as plaintiff.

Trial of question as between plaintiff and third party.

Stay of proceedings against defendant.

Before the Judicature Act, it was the more modern practice of courts of law to take notice of equitable claims in interpleader, this form of proceeding having its origin in the interpleader bill in Chancery. (See cases cited in note, p. 123.)

Among the general principles which have been acted upon in the

application for an interpleader between claimants generally are:—That the applicant be already defendant in an action at the suit of one of the claimants; that the claims of both claimants be in respect of the very same matter (*Slaney* v. *Sidney*, 14 M. & W. 800); that the applicant claim no interest in the matter in dispute (*ib.*); that the applicant be not colluding with either party. (*Belcher* v. *Smith*, 9 Bing. 82.)

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A judge has no jurisdiction in pursuance of notice of trial to that effect to try the issue without a jury. (*Hamlyn* v. *Betteley*, 6 Q. B. D. 63; 50 L. J., C. P. 1.

2. The judgment in any such action or issue as may be directed by the court or judge, and the decision of the court or judge in a summary manner, shall be final and conclusive against the parties, and all persons claiming by, from, or under them.

Judgment to be final.

But where an issue is directed, a new trial may be granted in the same manner as in an ordinary action, if the verdict be against evidence. (*James* v. *Whitbread*, 11 C. B. 406; 20 L. J., C. P. 217.) There is an appeal from judgment in an action or issue. (*Witt* v. *Parker* (C. A.), 46 L. J., Q. B. 450.) But not from the decision in a summary manner under sect. 14 of the Act of 1860. See note to that section, *post*. (*Dodds* v. *Shepherd*, L. R., 1 Ex. D. 75; and p. 123, *ante*.)

3. If such third party shall not appear upon such rule or order to maintain or relinquish his claim, being duly served therewith, or shall neglect or refuse to comply with any rule or order to be made after appearance, it shall be lawful for the court or judge to declare such third party, and all persons claiming by, from, or under him, to be for ever barred from prosecuting his claim against the original defendant, his executors or administrators; saving nevertheless the right or claim of such third party against the plaintiff; and thereupon to make such order between such defendant and the plaintiff, as to costs and other matters, as may appear just and reasonable.

Default of appearance of third party.

This section applies also to cases where relief is sought by a sheriff under sect. 6. (*Ford* v. *Dilly*, 5 B. & Ad. 885.)

4. Provided always, that no order shall be made in pursuance of this act by a single judge of the Court of Pleas of the said county palatine of Durham who shall not also be a judge of one of the said courts at Westminster, and that every order to be made in pursuance of this act by a single judge not sitting in open court, shall be liable to be rescinded or altered by the court in like manner as other orders made by a single judge.

Appeal from judge to court.

The Court of Pleas at Durham being consolidated with the High Court of Justice (Act of 1873, sect. 16, sub-s. 10), the first proviso of this section is no longer needed.

5. Provided also, that if upon application to a judge in the first instance, or in any later stage of the proceedings, he shall think the matter more fit for the decision of the court, it shall be lawful for him to refer the matter to the court; and thereupon the court shall and may hear and dispose of the same in the same manner as if the proceeding had originally commenced by rule of court, instead of the order of a judge.

Reference by judge to court.

*Interpleader Act*, 1 & 2 *Will.* 4, *c.* 58, *ss.* 6, 7.

Relief of sheriffs and other officers in execution of process.

6. And whereas difficulties sometimes arise in the execution of process against goods and chattels, issued by or under the authority of the said courts, by reason of claims made to such goods and chattels by assignees of bankrupts and other persons not being the parties against whom such process has issued, whereby sheriffs and other officers are exposed to the hazard and expense of actions; and it is reasonable to afford relief and protection in such cases to such sheriffs and other officers; be it therefore further enacted, that when any such claim shall be made to any goods or chattels taken or intended to be taken in execution under any such process, or to the proceeds or value thereof, it shall and may be lawful to and for the court from which such process issued, upon application of such sheriff or other officer made before or after the return of such process, and as well before as after any action brought against such sheriff or other officer, to call before them, by rule of court, as well the party issuing such process as the party making such claim, and thereupon to exercise, for the adjustment of such claims and the relief and protection of the sheriff or other officer, all or any of the powers and authorities hereinbefore contained, and make such rules and decisions as shall appear to be just, according to the circumstances of the case; and the costs of all such proceedings shall be in the discretion of the court.

By 1 & 2 Vict. c. 45, s. 2, it was made lawful for a single judge of one of the superior courts of common law "to exercise such powers and authorities" for relief of sheriffs as may be exercised by the courts under this section, the costs of the proceedings to be in the discretion of such judge. The application ordinarily is made at chambers. If the matter be disposed of summarily in chambers by consent of parties, there is no appeal to the court. (*Shortridge* v. *Young*, 12 M. & W. 5.)

*Sheriff's interpleader.*] The principles and practice under this section are generally similar to those applicable to other interpleader proceedings, except that an interpleader may be awarded to a sheriff, although no action has been commenced against him (*Isaac* v. *Spilsbury*, 10 Bing. 3); and that collusion need not be denied by affidavit. (*Bond* v. *Woodhall*, 4 Dowl. 351.) But the sheriff may disentitle himself to relief by being personally interested (*Ostler* v. *Bower*, 4 Dowl. 605), or by delay. (*Tufton* v. *Harding*, 29 L. J., Ch. 225; *Mutton* v. *Young*, 4 C. B. 371.) It was doubted in *Tufton* v. *Harding*, whether the "bill of interpleader" lay in the case of a sheriff, and whether he was not confined to his remedy, by this statute, in the common law courts. The sheriff is rarely allowed costs (*Jones* v. *Lewis*, 8 M. & W. 264), and his right to poundage, fees, &c., being dependent on the validity of the seizure, abides the event of the claim. (*Clark* v. *Chetwode*, 4 Dowl. 635.)

Rules, &c. made in pursuance of act may be entered of record, and made evidence.

Costs.

7. All rules, orders, matters, and decisions to be made and done in pursuance of this act, except only the affidavits to be filed, may, together with the declaration in the cause (if any), be entered of record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times, if required, and to secure and enforce the payment of costs directed by any such rule or order; and every such rule or order so entered shall have the force and effect of a judgment, except only as to becoming a charge on any lands, tenements or hereditaments; and in case any costs shall not be paid within fifteen days after notice of the taxation and amount thereof given to the party ordered to

pay the same, his agent or attorney, execution may issue for the same by fieri facias or capias ad satisfaciendum, adapted to the case, together with the costs of such entry, and of the execution if by fieri facias; and such writ and writs may bear teste on the day of issuing the same, whether in term or vacation; and the sheriff or other officer executing any such writ shall be entitled to the same fees, and no more, as upon any similar writ grounded upon a judgment of the court.

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Writs.

Sheriffs' fees.

As the "true date" of the entry is to be expressed, the court has no power to give effect to a judgment previously to the true time at which it was entered. (*Lambirth* v. *Barrington*, 2 Bing. N. C. 149.)

8. And whereas by a certain act made and passed in the last session of parliament, intituled "An Act to improve the proceedings in Prohibition and on Writs of Mandamus," it was among other things enacted that it should be lawful for the court to which application may be made for any such writ of mandamus as is therein in that behalf mentioned to make rules and orders calling not only upon the person to whom such writ may be required to issue, but also all and every other person having or claiming any right or interest in or to the matter of such writ, to show cause against the issuing of such writ and payment of the costs of the application, and upon the appearance of such other person in compliance with such rules, or in default of appearance after service thereof, to exercise all such powers and authorities, and make all such rules and orders applicable to the case, as were or might be given or mentioned by or in any act passed or to be passed during that present session of parliament for giving relief against adverse claims made upon persons having no interest in the subject of such claims: And whereas no such act was passed during the then present session of parliament: Be it therefore enacted, that upon any such application as in the said act and hereinbefore-mentioned, it shall be lawful for the court to exercise all such powers and authorities, and make all such rules and orders applicable to the case, as are given or mentioned by or in this present act.

Upon any application under 1 Will. 4, c. 21, and this act, the court to exercise such powers and make such rules as are given by or mentioned in this act.

[23 & 24 VICT. c. 126, ss. 12—18.]

(The Common Law Procedure Act, 1860.)

*An Act for the further Amendment of the Process, Practice and Mode of Pleading in and enlarging the Jurisdiction of the Superior Courts of Common Law at Westminster.*

[28th August, 1860.]

(Incorporated by Ord. I., Rule 2, p. 123.)

12. Where an action has been commenced in respect of a common law claim for the recovery of money or goods, or where goods or chattels have been taken or are intended to be taken in execution under process, issued from any one of the superior courts, or from the Court of Common Pleas at Lancaster or the Court of Pleas at Durham, and the defendant in such action, or the sheriff or other officer, has applied for relief under the provisions of "1 & 2 Will. 4,

Interpleader may be granted though titles have not a common origin.

*Interpleader Act*, 23 & 24 *Vict. c.* 126, *ss.* 12—17.

c. 58," it shall be lawful for the court or a judge to whom such application is made to exercise all the powers and authorities given them by this act "and 1 & 2 Will. 4, c. 58," though the titles of the claimants to the money, goods, or chattels in question, or to the proceeds or value thereof, have not a common origin, but are adverse to and independent of one another.

For the application of this section, which rescinded the rule which had obtained in the common law courts in imitation of the Chancery practice, see *Meynell* v. *Angell*, 32 L. J., Q. B. 14.

Court may direct sale of goods seized in execution.

**13.** When goods or chattels have been seized in execution by a sheriff or other officer under process of the above-mentioned courts, and some third person claims to be entitled under a bill of sale or otherwise to such goods or chattels by way of security for a debt, the court or a judge may order a sale of the whole or part thereof upon such terms as to payment of the whole or part of the secured debt or otherwise as they or he shall think fit, and may direct the application of the proceeds of such sale in such manner and upon such terms as to such court or judge may seem just.

Summary disposal of trifling claims.

**14.** Upon the hearing of any rule or order calling upon persons to appear and state the nature and particulars of their claims, it shall be lawful for the court or judge, wherever, from the smallness of the amount in dispute or of the value of the goods seized, it shall appear to them or him desirable and right so to do, at the request of either party, to dispose of the merits of the respective claims of such parties, and to determine the same in a summary manner, upon such terms as they or he shall think fit to impose, and to make such other rules and orders therein as to costs and all other matters as may be just.

See note to Ord. I., Rule 2, p. 123, *ante*; and as to appeal, see sect. 17 and note, *post*.

Special case.

**15.** In all cases of interpleader proceedings, where the question is one of law and the facts are not in dispute, the judge shall be at liberty, at his discretion, to decide the question without directing an action or issue, and, if he shall think it desirable, to order that a special case be stated for the opinion of the court.

Proceedings on special case.

**16.** The proceedings upon such case shall, as nearly as may be, be the same as upon a special case stated under "The Common Law Procedure Act, 1852;" and error may be brought upon a judgment upon such case; and the provisions of "The Common Law Procedure Act, 1854," as to bringing error upon a special case, shall apply to the proceedings in error upon a special case under this act.

Sects. 46—48 of the C. L. P. Act, 1852, and sect. 32 of the C. L. P. Act, 1854, are the sections referred to, but the special case of the former act will now be superseded by that of Ord. LXXXIV., and proceedings in error are abolished by Ord. LVIII., Rule 1. In lieu of proceedings in error an appeal will lie to the Court of Appeal, under sect. 19 of the Act of 1873, and Order LVIII. of the Act of 1875.

Judgment, when final.

**17.** The judgment in any such action or issue as may be directed by the court or judge in any interpleader proceedings, and the

decision of the court or judge in a summary manner, shall be final and conclusive against the parties and all persons claiming by, from, or under them.

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This section is identical with 1 & 2 Will. 4, c. 58, s. 2, *ante*, but there is no provision in this act corresponding to sect. 4 of that act, and it has been held that there is no appeal from a summary decision under sect. 14. (*Dodds* v. *Shepherd*, 1 Ex. D. 75.)

Rules, &c. in interpleader proceedings may be entered of record and made evidence.

18. All rules, orders, matters and decisions to be made and done in interpleader proceedings under this act (excepting only any affidavits) may, together with the declaration in the cause, if any, be entered of record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times, if required, and to secure and enforce the payment of costs directed by any such rule or order; and every such rule or order so entered shall have the force and effect of a judgment in the superior courts of common law.

This section is substantially identical with the former part of 1 & 2 Will. 4, c. 58, *ante*.

## III.

### PARTIES IN ADMINISTRATION AND TRUST ACTIONS.

[15 & 16 VICT. c. 86, s. 42.]

*An Act to amend the Practice and Course of Proceeding in the High Court of Chancery.* [1st July, 1852.]

(Incorporated by Ord. XVI., Rule 11, p. 156.)

Defendant not to object for want of parties in any case within rules herein set forth.

**42.** It shall not be competent to any defendant in any suit in the said court to take any objection for want of parties to such suit, in any case to which the rules next hereinafter set forth extend; and such rules shall be deemed and taken as part of the law and practice of the said court, and any law or practice of the said court inconsistent therewith shall be and is hereby abrogated and annulled.

Residuary legatee.

Rule 1. Any residuary legatee, or next of kin, may, without serving the remaining residuary legatees or next of kin, have a decree for the administration of the personal estate of a deceased person.

Legacy charged on real estate.

Rule 2. Any legatee interested in a legacy charged upon real estate, and any person interested in the proceeds of real estate directed to be sold may, without serving any other legatee or person interested in the proceeds of the estate, have a decree for the administration of the estate of a deceased person.

Residuary devisee.

Rule 3. Any residuary devisee or heir may, without serving any co-residuary devisee or co-heir, have the like decree.

Trust action.

Rule 4. Any one of several cestuis que trust under any deed or instrument may, without serving any other of such cestuis que trust, have a decree for the execution of the trusts of the deed or instrument.

Waste.

Rule 5. In all cases of suits for the protection of property pending litigation, and in all cases in the nature of waste, one person may sue on behalf of himself and of all persons having the same interest.

Administration action.

Rule 6. Any executor, administrator, or trustee, may obtain a decree against any one legatee, next of kin, or cestui que trust, for the administration of the estate, or the execution of the trusts.

Additional parties.

Rule 7. In all the above cases the court, if it shall see fit, may require any other person or persons to be made a party or parties to the suit, and may, if it shall see fit, give the conduct of the suit to such person as it may deem proper, and may make such order in any particular case as it may deem just for placing the defendant on the record on the same footing, in regard to costs, as other parties having a common interest with him in the matters in question.

Notice to necessary parties.

Rule 8. In all the above cases the persons who, according to the present practice of the court, would be necessary parties to the suit shall be served with notice of the decree, and after such notice they shall be bound by the proceedings in the same manner as if they

had been originally made parties to the suit, and they may, by an order of course, have liberty to attend the proceedings under the decree, and any party so served may within such time as shall in that behalf be prescribed by the general order of the Lord Chancellor, apply to the court to add to the decree. 15 & 16 *Vict.* *c.* 86, *s.* 42.

Rule 9. In all suits concerning real or personal estate which is vested in trustees under a will, settlement, or otherwise, such trustees shall represent the persons beneficially interested under the trust, in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested under the trusts parties to the suit; but the court may, upon consideration of the matter on the hearing if it shall so think fit, order such persons or any of them to be made parties. Trustees to represent beneficiaries.

The 11th Rule of the 16th Order of the Judicature Act, 1875, provides, that "subject to the provisions of the act and these rules, the provisions as to parties, contained in sect. 42 of 15 & 16 Vict. c. 86, shall be in force as to actions in the High Court of Justice." The section, although taken out of a Chancery Procedure Act, is, according to the general scheme of the Judicature Acts, applied to the whole court; but all the nine rules which it lays down, except the 5th and 9th, concern business assigned by sect. 34 of the Judicature Act, 1873, to the Chancery Division. The section is made subject to the Rules of the Judicature Act, 1873, and Rule 7 of the 16th Order deals with some portion of the same subject as this section.

## IV.

### CHARGING OF STOCK AND DISTRINGAS.

[1 & 2 VICT. c. 110, ss. 14, 15.]

*An Act for abolishing Arrest on Mesne Process in Civil Actions, except in certain cases, for extending the Remedies of Creditors against the Property of Debtors, and for amending the Laws for the Relief of Insolvent Debtors in England.*
[10th August, 1838.]

(Incorporated by Ord. XLVI., Rule 1, p. 234.)

Stock and shares in public funds and public companies belonging to a judgment debtor may be charged by order of a judge.

**14.** If any person against whom any judgment shall have been entered up in any of her Majesty's superior courts at Westminster shall have any government stock, funds or annuities, or any stock or shares of or in any public company in England (whether incorporated or not), standing in his name in his own right, or in the name of any person in trust for him, it shall be lawful for a judge of one of the superior courts, on the application of any judgment creditor, to order that such stock, funds, annuities, or shares, or such of them or such part thereof respectively as he shall think fit, shall stand charged with the payment of the amount for which judgment shall have been so recovered, and interest thereon, and such order shall entitle the judgment creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment debtor; provided that no proceedings shall be taken to have the benefit of such charge until after the expiration of six calendar months from the date of such order.

A judge of the Court of Chancery had no jurisdiction under this section to enforce a common law judgment. (*Miles* v. *Pressland*, 4 My. & C. 431.) But a judge of the Chancery Division will now have such jurisdiction by virtue of sect. 24, sub-sect. 6, of the Judicature Act of 1873. (See *Hopewell* v. *Barnes*, 1 Ch. D. 630.)

In *Cragg* v. *Taylor* (L. R., 1 Ex. 148), the Court of Exchequer refused to rescind an order absolute where the application for rescission was made on the ground that the judgment debtor was trustee for a third person; but such a case will now be one of those in which all divisions of the High Court will take notice of the incidental equities of a cestui que trust under sect. 24, sub-sect. 4, of the Act of 1873 (p. 16). Stock of a company standing in the name of a trustee is not affected by a charging order obtained by a judgment creditor in respect of the trustee's own debt. (*Blakely Ordnance Co., In re*, 35 L. T. 617; 25 W. R. 111.)

Under the charging order the judgment creditor has the same right as against prior incumbrancers as he would have had under a valid charge made at the same moment by the debtor himself. (*Watts* v. *Porter*, 3 E. & B. 743.) The proviso at the end of the section does not prevent the creditor from obtaining a stop order to restrain the payment of dividends accruing within the six months. (*Watts* v. *Jeffryes*, 20 L. J., Ch. 659.)

A charging order cannot be given except for an ascertained sum, and not for costs, charges and expenses until they have been taxed. (*Widgery* v. *Tepper* (C. A.), 6 Ch. D. 364.) But an order may be made in respect of a judgment made payable at a future day. (*Bagnall* v. *Carlton*, *ibid.* 130.)

*Incorporated Statutes. Charging Acts.*

Order of judge to be made in the first instance ex parte, and on notice to the bank or company to operate as a distringas.

15. And in order to prevent any person against whom judgment shall have been obtained from transferring, receiving, or disposing of any stock, funds, annuities, or shares hereby authorized to be charged for the benefit of the judgment creditor under an order of a judge, be it further enacted, that every order of a judge charging any government stock, funds, or annuities, or any stock or shares in any public company, under this act, shall be made in the first instance ex parte, and without any notice to the judgment debtor, and shall be an order to show cause only; and such order, if any government stock, funds, or annuities standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is to be affected by such order, shall restrain the governor and company of the Bank of England from permitting a transfer of such stock in the meantime and until such order shall be made absolute or discharged; and if any stock or shares of or in any public company, standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is or are to be affected by any such order, shall in like manner restrain such public company from permitting a transfer thereof; and that if, after notice of such order to the person or persons to be restrained thereby, or in case of corporations to any authorized agent of such corporation, and before the same order shall be discharged or made absolute, such corporation or person or persons shall permit any such transfer to be made, then and in such case the corporation or person or persons so permitting such transfer shall be liable to the judgment creditor for the value or amount of the property so charged and so transferred, or such part thereof as may be sufficient to satisfy his judgment; and that no disposition of the judgment debtor in the meantime shall be valid or effectual as against the judgment creditor; and further, that unless the judgment debtor shall within a time to be mentioned in such order show to a judge of one of the said superior courts sufficient cause to the contrary, the said order shall, after proof of notice thereof to the judgment debtor, his attorney or agent, be made absolute: provided that any such judge shall, upon the application of the judgment debtor, or any person interested, have full power to discharge or vary such order, and to award such costs upon such application as he may think fit.

Judgment debtor may show cause.

The power to make the *ex parte* order is given to a judge, and the court cannot review his decision in the matter until the order has been made absolute. (*Brown* v. *Bamford*, 9 M. & W. 42; *Fowler* v. *Churchill*, 11 M. & W. 57.) If the judgment debtor has assigned the stock before the date of the order *nisi*, the assignee may obtain a stop order before the order *nisi* has been made absolute. (*Warburton* v. *Hill*, 23 L. J., Ch. 633.) The order cannot be made absolute if it appear that the judgment debtor was dead when the order *nisi* was obtained. (*Finney* v. *Hinde*, 4 Q. B. D. 102.)

[3 & 4 VICT. c. 82, s. 1.]

*An Act for further amending the Act for abolishing Arrest on Mesne Process in Civil Actions.* [7th August, 1840.]

(Incorporated by Ord. XLVI., Rule 1, p. 234.)

Extension of 1 & 2 Vict. c. 110, s. 14, to reversionary interests.

**1.** Whereas, by an act passed [1 & 2 Vict. c. 110] it was, amongst other things, enacted [reciting s. 14], and whereas doubts have been entertained whether the said provisions extend to the cases hereinafter mentioned, now therefore be it declared and enacted, that the aforesaid provisions of the said act shall be deemed and taken to extend to the interest of any judgment debtor, whether in possession, remainder, or reversion, and whether vested or contingent as well in any such stocks, funds, annuities or shares as aforesaid, as also in the dividends, interest, or annual produce of any such stock, funds, annuities, or shares, and whenever any such judgment debtor shall have any estate, right, title, or interest vested or contingent in possession, remainder or reversion, in, to, or out of any such stocks, funds, annuities or shares as aforesaid, which now are or shall hereafter be standing in the name of the accountant general of the Court of Chancery or the accountant general of the Court of Exchequer, or, in, to, or out of the dividends, interest, or annual produce thereof, it shall be lawful for such judge to make any order as to such stock, funds, annuities, or shares, or the interest, dividends, or annual produce thereof, in the same way as if the same had been standing in the name of a trustee of such judgment debtor: provided always, that no order of any judge as to any stock, funds, annuities, or shares standing in the name of the accountant general of the Court of Chancery, or the accountant general of the Court of Exchequer, or as to the interest, dividends, or annual produce thereof, shall prevent the governor and company of the Bank of England, or any public company, from permitting any transfer of such stocks, funds, annuities, or shares, or payment of the interest, dividends, or annual produce thereof, in such manner as the Court of Chancery or the Court of Exchequer respectively may direct, or shall have any greater effect than if such debtor had charged such stock, funds, annuities, or shares, or the interests, dividends, or annual produce thereof, in favour of the judgment creditor, with the amount of the sum to be mentioned in any such order.

[5 VICT. c. 5, ss. 4, 5.]

*An Act to make further Provision for the Administration of Justice* (*a*). [5th October, 1841.]

(Incorporated by Ord. XLVI., Rule 2, p. 234.)

Distringas on Bank of England.

**4.** It shall be lawful for the said Court of Chancery upon the application of any party interested, by motion or petition in a

(*a*) This act transferred to the Court of Chancery the Equity jurisdiction of the Court of Exchequer.

summary way without bill filed, to restrain the governor and company of the Bank of England, or any other public company, whether incorporated or not, from permitting the transfer of any stock in the public funds, or any stock or shares in any public company which may be standing in the name or names of any person or persons, or body politic or corporate, in the books of the governor and company of the Bank of England, or in the books of any such public company, or from paying any dividend or dividends due or to become due thereon; and every order of the said Court of Chancery upon such motion or petition as aforesaid, shall specify the amount of the stock or the particular shares to be affected thereby, and the name or names of the person or persons, body politic or corporate, in which the same shall be standing: provided always, that the said Court of Chancery shall have full power, upon the application of any party interested, to discharge or vary such order, and award such costs upon such application as to the said court shall seem fit.

*Incorporated Statutes. Charging Acts.*

Issuable from Chancery, not Exchequer.

5. In the place and stead of the writ of distringas, as the same has been heretofore issued from the said Court of Exchequer, a writ of distringas in the form set out in the first schedule to this act shall be issuable from the Court of Chancery, and shall be sealed at the subpœna office, and the force and effect of such writ and the practice under or relating to the same, shall be such as is now in force in the said Court of Exchequer: provided nevertheless, that such writ, and the practice under or relating to the same, and the fees and allowances in respect thereof, shall be subject to such orders and regulations as may under the provisions of this act, or of any other act now in force, or under the general authority of the Court of Chancery, be made with reference to the proceedings and practice of the said Court of Chancery.

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## THE SCHEDULE.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriffs of London, greeting: We command you that you omit not, by reason of any liberty, but that you enter the same and distrain the governor and company of the Bank of England by all their lands and chattels in your bailiwick, so that they or any of them do not intermeddle therewith until we otherwise command you; and that you answer us the issues of the said lands, so that they do appear before us in our High Court of Chancery on the day of , to answer a certain bill of complaint lately exhibited against them and other defendants before us in our said Court of Chancery by complainant; and further to do and receive what our said court shall then and there order in the premises. Witness ourself at Westminster, the day of , in the year of our reign.

DEVON.

# ADDITIONAL ACTS AND RULES.

I. Arbitration (*a*).
(9 Will. 3, c. 15; 3 & 4 Will. 4, c. 42, ss. 39—42; C. L. P. Act, 1854, ss. 3—17.)

II. Oral Evidence and Stamping of Documents at the Trial.
(C. L. P. Act, 1854, ss. 18—31; Stamp Act, 1870, ss. 16—18.)

III. Trial by Jury.
(6 Geo. 4, c. 50, ss. 26, 27, 29—32, 34, 35, 37; C. L. P. Act, 1852, and R. G. H. T. 1853.)

IV. Imprisonment for Debt; Warrant of Attorney.
(The Debtors Act, 1869, 32 & 33 Vict. c. 62, and the Debtors Act, 1878, 41 & 42 Vict. c. 54.)

V. Evidence on Commission.
(1 Will. 4, c. 22.)

VI. Action in *formâ pauperis*.
(11 Hen. 7, c. 12.)

VII. Appeals from and Removals to and from County Courts.
(County Court Acts, 9 & 10 Vict. c. 95, s. 90; 13 & 14 Vict. c. 61, ss. 14—16; 19 & 20 Vict. c. 108, ss. 23, 26, 38—42; 28 & 29 Vict. c. 99, s. 18; 30 & 31 Vict. c. 142, s. 13; 31 & 32 Vict. c. 71, ss. 26, 31, 32; 38 & 39 Vict. c. 50, s. 5.)

VIII. Winter and Spring Assizes Acts.
(39 & 40 Vict. c. 57; 40 & 41 Vict. c. 46; 42 Vict. c. 1.)

IX. Titles of Statutes and Rules regulating Proceedings in Matrimonial, Admiralty and Probate Causes.

X. Titles of Statutes and Rules relating to Proceedings on the Revenue Side of the Exchequer Division.

XI. Titles of Statutes, Rules and Regulations relating to the business in Chambers of the Chancery Division.

XII. Titles of Winding-up Acts and Rules.

XIII. List of Statutes giving Jurisdiction in "Matters" assigned to the Chancery Division and of the Orders thereon.

## I.

### Arbitration.

[9 Will. 3, c. 15.]

"*An Act for determining Differences by Arbitration.*"

[A.D. 1697.]

Whereas it hath been found by experience that references made by rule of court have contributed much to the ease of the subject, in the determining of controversies, because the parties become thereby obliged to submit to the award of the arbitrators, under the penalty of imprisonment for their contempt in case they refuse submission;

(*a*) See sects. 56—59 of the Act of 1873, and notes thereto, pp. 45—47, *ante*.

now for promoting trade and rendering the awards of arbitrators the more effectual in all cases, for the final determination of controversies referred to them [by] merchants and traders or others, concerning matters of account or trade or other matters: Be it enacted, &c., that from and after the eleventh day of May, which shall be in the year of our Lord one thousand six hundred and ninety-eight, it shall and may be lawful for all merchants and traders and others desiring to end any controversy, suit or quarrel, controversies, suits or quarrels (for which there is no [other] remedy but by personal action or suit in equity) by arbitration, to agree that their submission of their suit to the award or umpirage of any person or persons should be made a rule of any of his Majesty's courts of record which the parties shall choose, and to insert such their agreement in their submission or the condition of the bond or promise, whereby they oblige themselves respectively to submit to the award or umpirage of any person or persons, which agreement, being so made and inserted in their submission or promise or condition of their respective bonds, shall or may upon producing an affidavit thereof, made by the witnesses thereunto, or any one of them, in the court of which the same is agreed to be made a rule, and reading and filing the said affidavit in court, be entered of record in such court, and a rule shall thereupon be made by the said court, that the parties shall submit to and finally be concluded by the arbitration or umpirage which shall be made concerning them, by the arbitrators or umpire pursuant to such submission; and in case of disobedience to such arbitration or umpirage, the party neglecting or refusing to perform and execute the same, or any part thereof, shall be subject to all the penalties of contemning a rule of court, when he is a suitor or defendant in such court, and the court, on motion, shall issue process accordingly, which process shall not be stopped or delayed in its execution by any order, rule, command, or process of any other court, either of law or equity, unless it shall be made appear on oath to such court, that the arbitrators or umpire misbehaved themselves, and that such award, arbitration, or umpirage was procured by corruption or other undue means.

9 *Will.* 3, *c.* 15, *ss.* 1, 2.

Power to agree that submission may be made rule of court.

Agreements to refer do not oust the jurisdiction of the courts, but where an agreement makes it a condition precedent to a right of action that the amount of damages shall be ascertained by arbitration, an action does not lie until the amount of damages has been so ascertained. (*Scott* v. *Avery*, 5 H. L. C. 811; 6 H. & N. 239; and see *Edwards* v. *Aberayron, &c. Co.*, 1 Q. B. D. 563; 34 L. T. 457.)

A parol submission is not within this act. (*Ansell* v. *Evans*, 7 T. R. 1.)

If it be not agreed that the submission may be made a rule of court, it may be revoked by either party before award. (*Re Rouse and Meier*, L. R., 6 C. P. 212.)

An application to set aside must be made in that division of the High Court of which the submission has been made a rule of. (*Lomax's Arbitration, In re*, 42 L. T. 391.)

**2.** That any arbitration or umpirage procured by corruption or undue means shall be judged and esteemed void and of none effect, and accordingly be set aside by any court of law or equity, so as complaint of such corruption or undue practice be made in the court where the rule is made for submission to such arbitration or

9 *Will.* 3, *c.* 15, *s.* 2.

umpirage before the last day of the next term, after such arbitration or umpirage made and published to the parties, anything in this act contained to the contrary notwithstanding.

As to grounds other than those mentioned in this section, on which an award may be set aside, see Russell on Arbitration, ch. ix.

Notwithstanding the abolition of "terms," the motion to set aside must be made with reference to "terms," and not to sittings (*Christ's College* v. *Martin*, 3 Q. B. D. 28; 46 L. J., Q. B. 591), but service of notice of motion is equivalent to a "complaint" within the section. (*Smith* v. *Parkside Mining Co.*, 6 Q. B. D. 67.)

[3 & 4 WILL. 4, c. 42.]

*An Act for the further Amendment of the Law, and the better Advancement of Justice.* [14th August, 1833.]

Submission not revocable without leave of court.

**39.** And whereas it is expedient to render references to arbitration more effectual: Be it enacted, &c., that the power and authority of any arbitrator or umpire appointed by or in pursuance of any rule of court, or judge's order, or order of nisi prius, in any action now brought, or which shall be hereafter brought, or by or in pursuance of any submission to reference containing an agreement, that such submission shall be made a rule of any of his Majesty's courts of record, shall not be revocable by any party to such reference without the leave of the court by which such rule or order shall be made or which shall be mentioned in such submission or by leave of a judge, and the arbitrator or umpire shall and may and is hereby required to proceed with the reference notwithstanding any such revocation, and to make such award, although the person making such revocation shall not afterwards attend the reference, and that the court or any judge thereof may from time to time enlarge the term for any such arbitrator making his award.

If there be no stipulation that the submission be made a rule of court, it may be revoked without leave. (*Re Rouse and Meier*, L. R., 6 C. P. 212.)

As to enlargement, see also C. L. P. Act, 1854, s. 15, p. 505, *post*, which, however, has not repealed the present section. (*Re Burdon*, 27 L. J., C. P. 250.)

Power to arbitrator to compel attendance of witnesses.

**40.** That when any reference shall have been made by any such rule or order as aforesaid, or by any submission containing such agreement as aforesaid, it shall be lawful for the court by which such rule or order shall be made or which shall be mentioned in such agreement or for any judge, by rule or order to be made for that purpose, to command the attendance and examination of any person to be named, or the production of any documents to be mentioned in such rule or order, and the disobedience to any such rule or order shall be deemed a contempt of court if, in addition to the service of such rule or order, an appointment of the time and place of attendance in obedience thereto, signed by one at least of the arbitrators or by the umpire before whom the attendance is required, shall also be served, either together with or after the service of such rule or order: provided always, that every person

whose attendance shall be so required shall be entitled to the like conduct money and payment of expenses and for loss of time as for and upon attendance at any trial: provided also, that the application made to such court or judge for such rule or order shall set forth the county where such witness is residing at the time, or satisfy such court or judge that such person cannot be found: provided also, that no person shall be compelled to produce, under any such rule or order, any writing or other document that he would not be compelled to produce at a trial, or to attend at more than two consecutive days to be named in such order. 3 & 4 *Will.* 4, *c.* 42, *ss.* 40, 41.

**41.** That when in any rule or order of reference, or in any submission to arbitration containing an agreement that the submission shall be made a rule of court, it shall be ordered or agreed that the witnesses upon such reference shall be examined upon oath, it shall be lawful for the arbitrator or umpire, or any one arbitrator, and he or they are hereby authorized and required to administer an oath to such witnesses, or to take their affirmation in cases where affirmation is allowed by law instead of oath; and if upon such oath or affirmation any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and shall be prosecuted and punished accordingly. Power to arbitrator to administer an oath.

## [COMMON LAW PROCEDURE ACT, 1854, ss. 3—17.]

**3.** If it be made appear, at any time after the issuing of the writ, to the satisfaction of the court or a judge, upon the application of either party, that the matter in dispute consists wholly or in part of matters of mere account which cannot conveniently be tried in the ordinary way, it shall be lawful for such court or judge, upon such application, if they or he think fit, to decide such matter in a summary manner, or to order that such matter, either wholly or in part, be referred to an arbitrator appointed by the parties, or to an officer of the court, *or, in country causes, to the judge of any county court* (*b*), upon such terms as to costs and otherwise as such court or judge shall think reasonable; and the decision or order of such court or judge, or the award or certificate of such referee, shall be enforceable by the same process as the finding of a jury upon the matter referred. Power of compulsory reference of matters of account on application of either party.

It has been held that this section applies only to applications before trial, and gives no power to refer compulsorily at Nisi Prius (*Robson* v. *Lees*, 6 H. & N. 258; 30 L. J., Ex. 235); but judges often indirectly compel a reference at Nisi Prius. (See *Jones* v. *Beaumont*, 1 F. & F. 336.) It should be observed that the cause alone can be referred under this section, and that it gives no power to the judge to refer all matters in difference.

The Judicature Act makes no alteration of the practice under this section (*Cruikshank* v. *Floating Baths Co.*, 1 C. P. D. 260), but *Clow* v. *Harper*, decided since that act, is not a little in variance with the cases decided before that act. It was there held that, where a defendant denied his liability in an action for breach of covenant

(*b*) Words in italics repealed, 21 & 22 Vict. c. 74, s. 5.

*C. L. P. Act*, 1854, *ss.* 3—7.

to repair, the action ought not, and said by Cockburn, C. J., and Brett and Cotton, L. JJ., that it could not, be referred under this section (*Clow* v. *Harper* (C. A.), 3 Ex. D. 198; 47 L. J., Ex. 393; 38 L. T. 269; 26 W. R. 364); but it had before been held that on a compulsory reference the master could not decline to enter into a question of fraud (*Insull* v. *Moojen*, 3 C. B., N. S. 359; *Birmingham and Staffordshire Gas Co.* v. *Ratcliff*, L. R., 6 Ex. 224; 40 L. J., Ex. 136), and that if the matter of dispute consists either wholly or in part of matters of account, there may be a compulsory reference either of the whole matters in dispute or of part. (*Browne* v. *Emerson*, 25 L. J., C. P. 104; 17 C. B. 361.) *Clow* v. *Harper* would seem also to be inconsistent in principle with *Ward* v. *Pilley*, 5 Q. B. D. 427 (ante, p. 47).

As to costs, see *Leygo* v. *Young*, 24 L. J., C. P. 200; 16 C. B. 626; *Bell* v. *Postlethwaite*, 25 L. J., Q. B. 63; 5 E. & B. 695. The master, if he can certify under the County Courts Act, 1867, s. 5, must certify in his award and not after it. (*Bedwell* v. *Wood*, 2 Q. B. D. 626; 46 L. J., Q. B. 725; 36 L. T. 213.)

Special case may be stated, and question of fact tried.

**4.** If it shall appear to the court or a judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law fit to be decided by the court, or upon a question of fact fit to be decided by a jury, or by a judge upon the consent of both parties as hereinbefore provided, it shall be lawful for such court or judge to direct a case to be stated, or an issue or issues to be tried; and the decision of the court upon such case, and the finding of the jury or judge upon such issue or issues, shall be taken and acted upon by the arbitrator as conclusive.

Arbitrator may state special case.

**5.** It shall be lawful for the arbitrator upon any compulsory reference under this act, or upon any reference by consent of parties where the submission is or may be made a rule or order of any of the superior courts of law or equity at Westminster, if he shall think fit, and if it is not provided to the contrary, to state his award, as to the whole or any part thereof, in the form of a special case for the opinion of the court, and when an action is referred, judgment, if so ordered, may be entered according to the opinion of the court.

Error did not lie on such a special case (*Gumm* v. *Fowler*, 29 L. J., Q. B. 189), but appeal does (*Bidder* v. *North Staffordshire Railway Co.*, 4 Q. B. D. 412; 48 L. J., Q. B. 248; 40 L. T. 801; 27 W. R. 540).

Power of judge to direct arbitration at time of trial, when issues of fact left to his decision.

**6.** If upon the trial of any issue of fact by a judge under this act it shall appear to the judge that the questions arising thereon involve matter of account which cannot conveniently be tried before him, it shall be lawful for him, at his discretion, to order that such matter of account be referred to an arbitrator appointed by the parties, or to an officer of the court, or, in country causes, to a judge of any county court, upon such terms as to costs and otherwise, as such judge shall think reasonable; and the award or certificate of such referee shall have the same effect as hereinbefore provided as to the award or certificate of a referee before trial; and it shall be competent for the judge to proceed to try and dispose of any other matters in question, not referred, in like manner as if no reference had been made.

Proceedings before and

**7.** The proceedings upon any such arbitration as aforesaid shall,

except otherwise directed hereby, or by the submission or document authorizing the reference, be conducted in like manner, and subject to the same rules and enactments, as to the power of the arbitrator and of the court, the attendance of witnesses, the production of documents, enforcing or setting aside the award, and otherwise, as upon a reference made by consent under a rule of court or judge's order. *C. L. P. Act*, 1854, *ss.* 7—11. power of such arbitrator.

The arbitrator may view premises (*Mundey* v. *Black*, 30 L. J., C. P. 193), or he may employ a surveyor to view and report (*Gray* v. *Wilson*, L. R., 1 C. P. 50).

8. In any case where reference shall be made to arbitration as aforesaid the court or a judge shall have power at any time, and from time to time, to remit the matters referred, or any or either of them, to the reconsideration and redetermination of the said arbitrator, upon such terms, as to costs and otherwise, as to the said court or judge may seem proper. Power to send back to arbitrator.

A matter will not be remitted for a defect shown upon affidavit if the award be good on the face on it. (*Hodgkinson* v. *Fernie*, 27 L. J., C. P. 66.) The mistake of an arbitrator in point of law is no ground for setting the award aside. (*Allen* v. *Greenslade*, 33 L. T. 567.)

9. All applications to set aside any award made on a compulsory reference under this act shall and may be made within the first seven days of the term next following the publication of the award to the parties, whether made in vacation or term; and if no such application is made, or if no rule is granted thereon, or if any rule granted thereon is afterwards discharged, such award shall be final between the parties. Application to set aside the award.

The rule of *Christ's College* (*Governors*), *Brecknock* v. *Martin* (3 Q. B. D. 16, decided on 9 & 10 Will. 3, c. 15, s. 2, *ante*, p. 500),—that the "terms" as they existed before the Judicature Acts and not the sittings under the Rules of Court, regulate the time for moving—seems to be applicable to the present section also.

10. Any award made on a compulsory reference under this act may, by authority of a judge, on such terms as to him may seem reasonable, be enforced at any time after seven days from the time of publication, notwithstanding that the time for moving to set it aside has not elapsed. Enforcing of awards within period for setting them aside.

11. Whenever the parties to any deed or instrument in writing now hereafter made or executed, or any of them, shall agree that any then existing or future differences between them or any of them shall be referred to arbitration, and any one or more of the parties so agreeing, or any person or persons claiming through or under him or them, shall nevertheless commence any action at law or suit in equity against the other party or parties, or any of them, or against any person or persons claiming through or under him or them in respect of the matters so agreed to be referred, or any of them, it shall be lawful for the court in which action or suit is brought, or a judge thereof, on application by the defendant or defendants, or any of them, after appearance and before plea or answer, upon being satisfied that no sufficient reason exists why such matters cannot be or ought not to be referred to arbitration If action commenced by one party after all have agreed to arbitration, court or judge may stay proceedings.

*C. L. P. Act*, 1854, *ss.* 11—13.

according to such agreement as aforesaid, and that the defendant was at the time of the bringing of such action or suit, and still is, ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, to make a rule or order staying all proceedings in such action or suit, on such terms as to costs and otherwise as to such court or judge may seem fit: provided always, that any such rule or order may at any time afterwards be discharged or varied as justice may require.

This section applies not only to an agreement to refer contained in the instrument upon which the action arises, but to an agreement to refer collateral to such instrument; but it does not give the court power to stay an action where there is no subsisting agreement to refer capable of being performed, as where the agreement to refer, not having been made a rule of court, has been revoked. (*Randell* v. *Thompson* (C. A.), 1 Q. B. D. 748.)

For instance of stay where only question was one of law, see *Randegger* v. *Holmes*, L. R., 1 C. P. 679, and of refusal to stay where question of fraud was raised, see *Wallis* v. *Hirsch*, 26 L. ., C. P. 72.

On failure of parties or arbitrators, judge may appoint single arbitrator or umpire.

12. If in any case of arbitration the document authorizing the reference provide that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator; or if any appointed arbitrator refuse to act, or become incapable of acting, or die, and the terms of such document do not show that it was intended that such vacancy should not be supplied, and the parties do not concur in appointing a new one; or if, where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, such parties or arbitrators do not appoint an umpire or third arbitrator; or if any appointed umpire or third arbitrator refuse to act, or become incapable of acting, or die, and the terms of the document authorizing the reference do not show that it was intended that such a vacancy should not be supplied, and the parties or arbitrators respectively do not appoint a new one; then in every such instance any party may serve the remaining parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire or third arbitrator respectively; and if within seven clear days after such notice shall have been served no arbitrator, umpire or third arbitrator be appointed, it shall be lawful for any judge of any of the superior courts of law or equity at Westminster, upon summons to be taken out by the party having served such notice as aforesaid, to appoint an arbitrator, umpire or third arbitrator, as the case may be, and such arbitrator, umpire and third arbitrator respectively shall have the like power to act in the reference and make an award as if he had been appointed by consent of all parties.

When reference is to two arbitrators, and one party fail to appoint, other party may appoint arbitrator to act alone.

13. When the reference is or is intended to be to two arbitrators, one appointed by each party, it shall be lawful for either party in the case of the death, refusal to act, or incapacity of any arbitrator appointed by him, to substitute a new arbitrator, unless the document authorizing the reference show that it was intended that the vacancy should not be supplied; and if on such a reference one party fail to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party

shall have appointed an arbitrator and shall have served the party so failing to appoint with notice in writing to make the appointment, the party who has appointed an arbitrator may appoint such arbitrator to act as sole arbitrator in the reference, and an award made by him shall be binding on both parties as if the appointment had been by consent: provided, however, that the court or a judge may revoke such appointment, on such terms as shall seem just.

*C. L. P. Act*, 1854, *ss.* 13—16.

The provision as to the appointment of a sole arbitrator does not apply where the reference is to three arbitrators, one to be appointed by the parties, and the third to be chosen by the two. (*Gumm* v. *Hallett*, L. R., 14 Eq. 555.)

**14.** When the reference is to two arbitrators, and the terms of the document authorizing it do not show that it was intended that there should not be an umpire, or provide otherwise for the appointment of an umpire, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award, unless they be called upon by notice as aforesaid to make the appointment sooner.

Two arbitrators may appoint umpire.

**15.** The arbitrator acting under any such document or compulsory order of reference as aforesaid, or under any order referring the award back, shall make his award under his hand, and (unless such document or order respectively shall contain a different limit of time) within three months after he shall have been appointed, and shall have entered on the reference or shall have been called upon to act by a notice in writing from any party, but the parties may by consent in writing enlarge the term for making the award; and it shall be lawful for the superior court of which such submission, document or order is or may be made a rule or order, or for any judge thereof, for good cause to be stated in the rule or order for enlargement, from time to time to enlarge the term for making the award; and if no period be stated for the enlargement in such consent or order for enlargement, it shall be deemed to be an enlargement for one month; and in any case where an umpire shall have been appointed it shall be lawful for him to enter on the reference in lieu of the arbitrators, if the latter shall have allowed their time or their extended time to expire without making an award or shall have delivered to any party or to the umpire a notice in writing stating that they cannot agree.

Award to be made in three months, unless parties or court enlarge time.

As to enlargement of time where no limit in the reference, see *Lord* v. *Lee*, L. R., 3 Q. B. 404. Where the award was to be made within a month or such further time as the arbitrator should enlarge to, not exceeding three months, and the award was not made within the three months, it was held that a judge might enlarge the time. (*Denton* v. *Strong*, L. R., 9 Q. B. 117.)

For case of estoppel from alleging want of written consent to enlargement, see *Tyerman* v. *Smith*, 25 L. J., Q. B. 359.

The words "for good cause to be stated" are merely directory. (*Re Burdon*, 27 L. J., C. P. 250.)

**16.** When any award made on any such submission, document or order of reference as aforesaid directs that possession of any lands or tenements capable of being the subject of an action of ejectment shall be delivered to any party, either forthwith or at any future time, or that any such party is entitled to the possession

Rule to deliver possession of land pursuant to award to be enforced as a judgment in ejectment.

*C. L. P. Act*, 1854, *ss.* 16, 17.

of any such lands or tenements, it shall be lawful for the court of which the document authorizing the reference is or is made a rule or order to order any party to the reference who shall be in possession of any such lands or tenements, or any person in possession of the same claiming under or put in possession by him since the making of the document authorizing the reference, to deliver possession of the same to the party entitled thereto, pursuant to the award, and such rule or order to deliver possession shall have the effect of a judgment in ejectment against every such party or person named in it, and execution may issue and possession shall be delivered by the sheriff as on a judgment in ejectment.

Agreement or submission in writing may be made rule of court, unless a contrary intention appear.

17. Every agreement or submission to arbitration by consent, whether by deed or instrument in writing, not under seal, may be made a rule of any one of the superior courts of law or equity at Westminster, on the application of any party thereto, unless such agreement or submission contain words purporting that the parties intend that it should not be made a rule of court; and if in any such agreement or submission it is provided that the same shall or may be made a rule of one in particular of such superior courts, it may be made a rule of that court only; and if when there is no such provision a case be stated in the award for the opinion of one of the superior courts, and such court be specified in the award, and the document authorizing the reference have not, before the publication of the award to the parties, been made a rule of court, such document may be made a rule only of the court specified in the award; and when in any case the document authorizing the reference is or has been made a rule or order of any one of such superior courts, no other of such courts shall have any jurisdiction to entertain any motion respecting the arbitration or award.

A submission *not in an action*, however, if it do not contain a consent clause for making it a rule of court may be revoked by either party at pleasure at any time before award made (*Thomson* v. *Anderson*, L. R., 9 Eq. 523; 39 L. J., Ch. 468), although it may have been made a rule of court under this section (*Rouse, In re*, L. R., 6 C. P. 212; 40 L. J., C. P. 212, Bovill, C. J., diss.), for neither this section nor section 7 apply 3 & 4 Will. 4, c. 42, s. 39 (*ante*, p. 500), to such a case. (*Rouse, In re, supra.*)

## II.

### Oral Evidence and Stamping of Documents at the Trial.

[Common Law Procedure Act, 1854, ss. 18—31; Stamp Act, 1870, ss. 16—18.]

Speeches to the jury.

**18.** Upon the trial of any cause the addresses to the jury shall be regulated as follows: the party who begins, or his counsel, shall be allowed, in the event of his opponent not announcing at the close of the case of the party who begins his intention to adduce evidence, to address the jury a second time at the close of such case, for the purpose of summing up the evidence; and the party on the other side, or his counsel, shall be allowed to open the case, and also to sum up the evidence (if any) and the right to reply shall be the same as at present.

The right to begin is decided by the judge at the trial. (*Brandford* v. *Freeman*, 5 Ex. 734.) Such right ordinarily accompanies the *onus probandi*, and the best test seems to be by ascertaining which side would be entitled to a verdict, if no evidence were given. (See *Geach* v. *Ingall*, 14 M. & W. 95.) If the judge rule that there is no evidence to go to the jury, the plaintiff's counsel is not entitled to sum up. (*Hodges* v. *Ancrum*, 11 Ex. 214.) If the defendant's counsel does not, at the end of the plaintiff's case, "announce his intention to adduce evidence," he cannot afterwards change his mind and adduce it. (*Darby* v. *Ouseley*, 25 L. J., Ex. 257; 1 H. & N. 1.)

**19.** [Adjournment of trial.]

This is now provided for by Ord. XXXVI., Rule 21, p. 210.

Substitution of affirmation for oath in certain cases.

**20.** If any person called as a witness, or required or desiring to make an affidavit or deposition, shall refuse, or be unwilling from alleged conscientious motives to be sworn, it shall be lawful for the court or judge, or other presiding officer, or person qualified to take affidavits or depositions, upon being satisfied of the sincerity of such objection, to permit such person, instead of being sworn, to make his or her solemn affirmation or declaration in the words following:—

"I, A.B., do solemnly, sincerely, and truly affirm and declare that the taking of any oath is, according to my religious belief, unlawful; and I do also solemnly, sincerely, and truly affirm and declare, &c.:" which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form.

**21.** [Person making false affirmation to incur the same penalties as are or may be enacted against persons convicted of perjury.]

The above two sections apply to persons having a religious belief and objecting to be sworn in consequence of such belief. The case of

*C. L. P. Act*, 1854, *ss.* 21—24.

persons having no religious belief at all is provided for by the Evidence Further Amendment Act, 1869, 32 & 33 Vict. c. 68, s. 4, as follows:—

*Evidence of atheist.*] "If any person called to give evidence in any court of justice, whether in a civil or criminal proceeding, shall object to take an oath, or shall be objected to as incompetent to take an oath, such person shall, if the presiding judge is satisfied that the taking of an oath would have no binding effect on his conscience, make the following promise and declaration:—

'I solemnly promise and declare that the evidence given by me to the court shall be the truth, the whole truth, and nothing but the truth.'

"And any person who, having made such promise and declaration, shall wilfully and corruptly give false evidence, shall be liable to be indicted, tried and convicted for perjury, as if he had taken an oath."

By 33 & 34 Vict. c. 49, the words "court of justice" and "presiding judge" in this section include "any person [such as a referee] having by law authority to administer an oath for the taking of evidence." It seems doubtful whether the power of a judge, under 14 & 15 Vict. c. 100, s. 19, to direct a prosecution for perjury would extend to affirmations under the Evidence Amendment Act, 1869.

Impeaching credit of witness.

**22.** A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall in the opinion of the judge prove adverse, contradict him by other evidence, or, by leave of the judge, prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

In order to be contradicted, the "adverse" witness must appear to the judge to be not only unfavourable, but hostile. (*Greenough* v. *Eccles*, 5 C. B., N. S. 786.) That the decision of the judge upon the point is final, would seem to have been the opinion of the court in that case, and to be in harmony with the general spirit of the section. The "statement" may be either verbal or written. So it was held in *Jackson* v. *Thomason* (31 L. J., Q. B. 11); and *Ryberg* v. *Ryberg* (32 P. M. & A. 112), if it be an authority to the contrary, would probably not be followed.

Proof of contradictory statements of witness.

**23.** If a witness, upon cross-examination as to a former statement made by him relative to the subject-matter of the cause, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Cross-examination as to previous statements in writing.

**24.** A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject-matter of the cause, without such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the pur-

pose of so contradicting him: provided always, that it shall be competent for the judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he shall think fit.

*C. L. P. Act*, 1854, *ss.* 24, 25.

Previous conviction of witness.

**25.** A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanor, and upon being so questioned, if he either denies the fact or refuses to answer, it shall be lawful for the opposite party to prove such conviction; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the clerk of the court, or other officer having the custody of the records of the court where the offender was convicted, or by the deputy of such clerk or officer (for which certificate a fee of five shillings and no more shall be demanded or taken), shall, upon proof of the identity of the person, be sufficient evidence of the said conviction, without proof of the signature or official character of the person appearing to have signed the same.

The certificate must state that judgment was given for the felony mentioned therein. (*R.* v. *Ackroyd*, 1 C. & K. 158.) With respect to the identity, it is sufficient to prove that the witness is the person who underwent the sentence mentioned in the certificate; and it is not absolutely necessary to call a witness who was present at the trial to which the certificate refers. (*R.* v. *Crofts*, 9 C. & P. 219.) As to the signature to the certificate, see *R.* v. *Parsons*, L. R., 1 C. C. 24.

"This section," observes Mr. Day (C. L. P. Acts, 4th ed., p. 278), "does not interfere with the previous right to cross-examine a witness as to the commission of offences, either for the purpose of discrediting him or of contradicting him, if the question is so connected with the point in issue that the witness may be contradicted by the evidence if he deny the facts. Four rules on this subject may be considered as established in practice—

"1. A witness may be asked any question, whether with a view to his discredit, or to contradict him (where contradictory evidence is admissible), although the answer may also tend to subject him to a criminal prosecution, a penalty or a forfeiture.

"2. If the answer has such tendency, the witness is not bound to give it, whatever the object or effect of the question may be; and it was at one time thought that he was to judge for himself whether the effect of the answer would be such as to subject him to a criminal charge (*Fisher* v. *Ronalds*, 12 C. B. 762; but see now *Osborne* v. *London Dock Co.*, 24 L. J., Ex. 140; 10 Ex. 698; *R.* v. *Boyes*, 1 B. & S. 311; 30 L. J., Q. B. 301; *Ex parte Fernandez*, 10 C. B., N. S. 3; 30 L. J., C. P. 321); and when the witness assigns insufficient reasons for not answering, he may certainly be compelled to answer. (*Re Aston's case*, 4 De G. & J. 320; 27 Beav. 474.)

"3. Evidence cannot be adduced to contradict the witness, if he deny the imputation, unless the fact sought to be established is material to the issue.

"4. Before such evidence is given, the witness should be further questioned upon the subject, in order to afford him an opportunity for explanation."

*How far Witness bound to answer questions affecting his own character.*] It is clear law, therefore, that a witness is bound to answer questions, notwithstanding that the direct effect of the answer will be to degrade his character, upon matters relevant to the issue. But it is not so clear whether the witness is bound to

*C. L. P. Act*, 1854, *ss.* 25, 27.

answer such questions, if only put for the purpose of testing his credit. See this subject fully discussed, Taylor on Evidence, vol. 2, p. 1266, where it is said that "the privilege of refusing to answer, if it still exists, is certainly much discountenanced in the practice of modern times," but that "questions respecting alleged improprieties of conduct, which furnish no real ground for assuming that a witness who could be guilty of them would not be a man of veracity, might very fairly be checked." It is suggested as reasonable that a witness might be compelled to answer questions simply going to his credit in cases where it has been once shown that he has an interest in concealing the true answers to previous questions, and in such cases only.

By 46 Geo. 3, c. 37, it was declared and enacted, that a witness "cannot by law refuse to answer a question relevant to the matter in issue on the sole ground that the answering of such question may establish that he owes a debt, or is otherwise subject to a civil suit, either at the instance of the crown or of any other person." The use of the words "relevant to the matter in issue," in this statute, is, perhaps, somewhat in favour of a witness refusing to answer a question not relevant, on the sole ground that the answer would tend to degrade his character, and it might also be argued that the present section confines such questions to cases of conviction for felony or misdemeanor.

Proof of attesting witness dispensed with.

**26.** It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite; and such instrument may be proved by admission or otherwise, as if there had been no attesting witness thereto.

The principal instruments, to the validity of which attestation is by statute requisite, are wills (1 Vict. c. 26) and warrants of attorney (1 & 2 Vict. c. 110). As to wills, it seems that at law it was necessary to call only one witness, while in equity it was necessary to call both. (See Taylor on Evidence, vol. 2, p. 1578, citing *Bootle* v. *Blundell*, 19 Ves. 494.)

Comparison of handwriting.

**27.** Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute.

[**28, 29.** *Stamping documents at trial; Receipt of duty and penalty by officer of Court.* Repealed, Inland Revenue Repeal Act, 1870 (33 & 34 Vict. c. 99). See now Stamp Act, 1870 (33 & 34 Vict. c. 97) ss. 15, 16, 17, *infra.*]

The provisions of sects. 28, 29, are substantially re-enacted by the Stamp Act, 1870, as follows:

*Stamp Act*, 1870.

Stamping of instruments after execution.

**15.** (1.) Except where express provision to the contrary is made by this or any other act, any unstamped or insufficiently-stamped instrument may be stamped after the execution thereof, on payment of the unpaid duty and a penalty of ten pounds, and also by way of further penalty, where the unpaid duty exceeds ten pounds, of interest on such duty at the rate of five pounds per centum per annum from the day upon which the instrument was first executed up to the time when such interest is equal in amount to the unpaid

duty. And the payment of any penalty or penalties is to be denoted on the instrument by a particular stamp.

*Stamp Act*, 1870, *ss.* 15—17.

(2.) Provided as follows:

(*a.*) Any unstamped or insufficiently-stamped instrument which has been first executed at any place out of the United Kingdom, may be stamped at any time within two months after it has been first received in the United Kingdom, on payment of the unpaid duty only:

(*b.*) The commissioners may, if they think fit, at any time within twelve months after the first execution of any instrument, remit the penalty or penalties or any part thereof.

By sect. 56, no bill of lading, and by sect. 102, no power of attorney for the purpose of appointing a proxy to vote at a meeting, or voting paper, may be stamped after execution. Policies of marine insurance may be stamped after execution, on payment of 100*l.* penalty, under 39 Vict. c. 6, s. 2.

Receiving of unstamped document in evidence on payment of penalty.

**16.** (1.) Upon the production of an instrument chargeable with any duty, as evidence in any court of civil judicature in any part of the United Kingdom, the officer whose duty it is to read the instrument shall call the attention of the judge to any omission or insufficiency of the stamp thereon, and if the instrument is one which may legally be stamped after the execution thereof, it may, on payment to the officer of the amount of the unpaid duty and the penalty payable by law on stamping the same as aforesaid, and of a further sum of one pound, be received in evidence, saving all just exceptions on other grounds.

Officer of court to account for duties and penalties.

(2.) The officer receiving the said duty and penalty shall give a receipt for the same and make an entry in a book kept for that purpose, of the payment and of the amount thereof, and shall communicate to the commissioners the name or title of the cause or proceeding in which and of the party from whom he received the said duty and penalty, and the date and description of the instrument, and shall pay over to the receiver-general of inland revenue, or to such other person as the commissioners may appoint, the money received by him for the said duty and penalty.

Payment of duty may be denoted on instrument.

(3.) Upon production to the commissioners of any instrument in respect of which any duty or penalty has been paid as aforesaid, together with the receipt of the said officer, the payment of such duty and penalty shall be denoted on such instrument accordingly.

Except as aforesaid, unstamped documents inadmissible.

**17.** Save and except as aforesaid, no instrument executed in any part of the United Kingdom, or relating, wheresoever executed, to any property situate or to any matter or thing done or to be done in any part of the United Kingdom, shall, except in criminal proceedings, be pleaded or given in evidence or admitted to be good, useful or available in law or equity unless it is duly stamped, in accordance with the law in force at the time when it was first executed.

The effect of Stamp Acts prior to this act was to authorize the duties in force at the time of *affixing* the stamp (*Deakin* v. *Penniall*, 2 Ex. 230), which would be easy of ascertainment. The present section, by requiring the duties in force at the time of *executing* the instrument, may necessitate a very troublesome search. The duties in force from 1815 to 1878 may be found in Copinger's Tables of Stamp Duties.

*Stamp Act*, 1870, *s.* 17.

See *Clarke* v. *Roche* (3 Q. B. D. 170), for an enforcement of the present section.

Under the words "except as aforesaid," coupled with the opening words of sect. 15, it would seem that all stampable instruments, except bills of lading, powers of attorney for the purpose of appointing a proxy to vote at a meeting, and voting papers, are admissible in evidence, under sect. 15, as being instruments "which may legally be stamped after the execution thereof." Those instruments, such as charter-parties (sect. 66) and receipts (sect. 120), which may be stamped with an adhesive stamp at the time of execution, and may be stamped with an impressed stamp on payment of penalties within a limited time afterwards, may be given in evidence at as many trials as may be necessary, on satisfying the terms of sect. 16, *toties quoties*, but when the short time allowed for stamping them has expired, they cannot be stamped once for all.

As to avoidance of stamp directions, by consent of parties to the use of copies of unstamped originals, see *Traviss* v. *Hargreave*, 4 F. & F. 1078. As to the presumption of a document having been duly stamped, see *Closmadeuc* v. *Carrell*, 18 C. B. 36; 25 L. J., C. P. 216; *Arbon* v. *Fussell*, 7 L. T. 283; 11 W. R. 26.

The Court of Exchequer declined to hear a special case, relating to a policy of insurance, in which the parties had agreed that a defect in the stamp should be treated as non-existing. (*Nixon* v. *Albion Marine Insurance Co.*, L. R., 2 Ex. 338).

C. L. P. ACT, 1854 (*continued*).

**30.** No document made or required under this act shall be liable to any stamp duty.

The documents referred to are submission to arbitration under sect. 11.

New trial not to be granted for ruling as to stamp.

**31.** No new trial shall be granted by reason of the ruling of any judge that the stamp upon any document is sufficient, or that the document does not require a stamp.

The effect of this section is to make the ruling of the judge at the trial conclusive, if in favour of the party offering the document in evidence. (See *Rutty* v. *Benthall*, L. R., 2 C. P. 488.) If the document be rejected as being insufficiently stamped, the ruling of the judge is open to review. (*Glover* v. *Hackett*, 26 L. J., Ex. 416.)

## III.

## Trial by Jury.

[6 Geo. 4, c. 50, ss. 26, 27, 29—32, 34, 35, 37.]

Names of jurors to be delivered to the associate, and balloted for juries in civil courts.

26. The name of each man who shall be summoned and impannelled in any court of assize or nisi prius, with the place of his abode and addition, shall be written on a distinct piece of parchment or card, such pieces of parchment or card being all as nearly as may be of equal size, and shall be delivered unto the associate or prothonotary of such court by the under-sheriff of the county, or the secondary of the city of London, and shall, by direction and care of such associate or prothonotary, be put together in a box to be provided for that purpose, and when any issue shall be brought on to be tried, such associate or prothonotary shall in open court draw out twelve of the said parchments or cards one after another, and if any of the men whose names shall be so drawn shall not appear, or shall be challenged and set aside, then such further number, until twelve men be drawn, who shall appear, and after all just causes of challenge allowed, shall remain as fair and indifferent; and the said twelve men so first drawn and appearing, and approved as indifferent, their names being marked in the panel, and they being sworn, shall be the jury to try the issue, and the names of the men so drawn and sworn shall be kept apart by themselves until such jury shall have given in their verdict, and the same shall be recorded, or until such jury shall, by consent of the parties, or by leave of the court, be discharged, and then the same names shall be returned to the box, there to be kept with the other names remaining at that time undrawn, and so toties quoties as long as any issue remains to be tried: provided always, that if any issue shall be brought on to be tried in any of the said courts before the jury in any other issue shall have brought in their verdict or been discharged, it shall be lawful for the court to order twelve of the residue of the said parchments or cards, not containing the names of any of the jurors who shall not have so brought in their verdict or been discharged, to be drawn in such manner as is aforesaid, for the trial of the issue which shall be so brought on to be tried: provided also, that where no objection shall be made on behalf of the king or any other party, it shall be lawful for the court to try any issue with the same jury that shall have previously tried or been drawn to try any other issue, without their names being returned to the box and redrawn, or to order the name or names of any man or men on such jury, whom both parties may consent to withdraw, or who may be justly challenged or excused by the court, to be set aside, and another name or other names to be drawn from the box, and to try the issue with the residue of such original jury, and with such man or men whose name or names shall be so drawn, and who shall appear and be approved as indifferent, and so toties quoties as long as any issue remain to be tried.

Where the juries have not brought in their verdict, twelve others to be drawn.

Trial of several issues by same jury.

6 *Geo.* 4, *c.* 50, *ss.* 27—31.

Want of qualification in common jurors to be cause of challenge.

**27.** If any man shall be returned as a juror for the trial of any issue in any of the courts hereinbefore mentioned, who shall not be qualified according to this act, the want of such qualification shall be good cause of challenge, and he shall be discharged upon such challenge, if the court shall be satisfied of the fact; and that if any man returned as a juror for the trial of any such issue shall be qualified in other respects according to this act, the want of freehold shall not on such trial in any case, civil or criminal, be accepted as good cause of challenge, either by the crown or by the party, nor as cause for discharging the man so returned upon his own application; any law, custom, or usage to the contrary notwithstanding; provided that nothing herein contained shall extend in anywise to any special juror.

Not to extend to special jurors.

* * * * *

The king shall only challenge for cause.

**29.** And be it further enacted, that in all inquests to be taken before any of the courts hereinbefore mentioned, wherein the king is a party, howsoever it be, notwithstanding it be alleged by them that sue for the king, that the jurors of those inquests, or some of them, be not indifferent for the king, yet such inquests shall not remain untaken for that cause; but if they that sue for the king will challenge any of those jurors, they shall assign of their challenge a cause certain, and the truth of the same challenge shall be inquired of according to the custom of the court; and it shall be proceeded to the taking of the same inquisitions, as it shall be found, if the challenges be true or not, after the discretion of the court; and that no person arraigned for murder or felony shall be admitted to any peremptory challenge above the number of twenty.

Prisoner allowed twenty peremptory challenges only in felony.

Court to have the power of ordering special juries to be struck before the proper officer.

**30.** And be it further enacted and declared, that it is and shall be lawful for his Majesty's Courts of King's Bench, Common Pleas, and Exchequer at Westminster respectively, and for the judges of the said courts of the three counties palatine and of the courts of great sessions in Wales, upon motion made on behalf of the king, or upon the motion of any prosecutor, relator, plaintiff, or demandant, or of any defendant or tenant, in any case whatsoever, whether civil or criminal, or on any penal statute, excepting only indictments for treason or felony, depending in any of the said courts, and the said courts and judges respectively are hereby authorized, in any of the cases before mentioned, to order and appoint a special jury to be struck before the proper officer of each respective court, for the trial of any issue joined in any of the said cases, and triable by a jury, in such manner as the said courts respectively have usually ordered the same; and every jury so struck shall be the jury returned for the trial of such issue.

Special jurors.

**31.** Every man who shall be described in the jurors' book for any county in England and Wales, or for the county of the city of London, as an esquire or person of higher degree, or as a banker or merchant, shall be qualified and liable to serve on special juries in every such county in England and Wales, and in London respectively; and the sheriff of every county in England and Wales, or his under-sheriff, and the sheriffs of London or their secondary, shall, within ten days after the delivery of the jurors' book for the current year to either of them, take from such book the names of all men who shall be described therein as esquires or persons of

higher degree, or as bankers or merchants, and shall respectively cause the names of all such men to be fairly and truly copied out in alphabetical order, together with their respective places of abode and additions, in a separate list to be subjoined to the jurors' book, which list shall be called "The Special Jurors' List," and shall prefix to every name in such list its proper number, beginning the numbers from the first name, and continuing them in a regular arithmetical series down to the last name, and shall cause the said several numbers to be written upon distinct pieces of parchment or card, being all as nearly as may be of equal size, and after all the said numbers shall have been so written, shall put the same together in a separate drawer or box, and shall there safely keep the same to be used for the purpose hereinafter mentioned.

6 *Geo.* 4, *c.* 50, *ss.* 31, 32.

By the Juries Act, 1870 (33 & 34 Vict. c. 77), sect. 6, occupiers of private houses rated to the poor-rate or house tax on a value of not less than 100*l.*, in a town of 20,000 inhabitants and upwards, or on a value of not less than 50*l.* elsewhere, and persons occupying premises other than a farm rated at a value of not less than 100*l.*, or a farm rated at a value of not less than 300*l.*, are, in addition to the persons named in this section, qualified and liable to serve as special jurors.

Time and place for nominating the special jury.

**32.** Whenever any of the courts and judges above mentioned shall order a special jury to be struck before the proper officer of such court, such officer shall appoint a time and place for the nomination of such special jury; and a copy of the rule of court, and of such officer's appointment, shall be served on the under-sheriff of the county in England or Wales in which the trial is to be had, or on the secondary of the city of London, if the trial is to be had there, and also on all the parties who have usually been served with the same respectively, in the accustomed manner; and the said officer, at the time and place appointed, being attended by such under-sheriff or secondary or his agent, who are hereby respectively required to bring with them the jurors' book and such special jurors' list, and all the numbers so written on distinct pieces of parchment or card as aforesaid, shall, in the presence of all the parties in any of the cases aforesaid, and of their attornies (if they respectively choose to attend, or if the said parties or their attornies, all or any of them, do not attend, then in their absence), put all the said numbers into a box, to be by him provided for that purpose, and after having shaken them together shall draw out of the said box forty-eight of the said numbers, one after another, and shall, as each number is drawn, refer to the corresponding number in the special jurors' list, and read aloud the name designated by such number; and if at the time of so reading any name, either party, or his attorney, shall object that the man whose name shall have been so referred to is in any manner incapacitated from serving on the said jury, and shall also then and there prove the same to the satisfaction of the said officer, such name shall be set aside, and the said officer shall instead thereof draw out of the said box another number, and shall in like manner refer to the corresponding number in the said list, and read aloud the name designated thereby, which name may be in like manner set aside, and other numbers and names shall in every such case be resorted to, according to the mode of proceeding hereinbefore described, for the purpose of supplying names in the places of those set aside, until

Under-sheriff or his agent to attend the officer with the special jurors' list, and all the numbers;

officer to put all the numbers in a box, and to draw out 48, and to check them with the numbers and names in the list.

6 *Geo.* 4, *c.* 50, *ss.* 32, 34, 35, 37.

the whole number of forty-eight names not liable to be set aside shall be completed; and if in any case it shall so happen that the whole number of forty-eight names cannot be obtained from the special jurors' list, in such case the said officer shall fairly and indifferently take, according to the mode of nomination heretofore pursued in nominating special juries, such a number of names from the general jurors' book, in addition to those already taken from the special jurors' list, as shall be required to make up the full number of forty-eight names, all and every of which forty-eight names shall in such case be equally deemed and taken to be those of special jurors; and the said officer shall afterwards make out for each party a list of the forty-eight names, together with their respective places of abode and additions, and after having made out such list, shall return all the numbers so drawn out, together with all the numbers remaining undrawn, to such under-sheriff or secondary, or his agent, to be by such under-sheriff or secondary safely and securely kept for future use.

* * * * *

Costs of special jury.

**34.** The person or party who shall appeal for a special jury shall pay the fees for striking such jury, and all the expenses occasioned by the trial of the cause by the same, and shall not have any further or other allowance for the same, upon taxation of costs, than such person or party would be entitled unto in case the cause had been tried by a common jury, unless the judge before whom the cause is tried shall, immediately after the verdict, certify under his hand upon the back of the record that the same was a cause proper to be tried by a special jury.

Certificate of judge.

The term "immediately" means within a reasonable time after the trial (*Christie* v. *Richardson*, 10 M. & W. 688), and an application made the day after the trial has been held to be too late. (*Waggett* v. *Shaw*, 3 Camp. 316.)

Fees to special jurors.

**35.** No juror who shall serve upon any special jury shall be allowed or take for serving on any such jury more than such sum of money as the judge who tries the issue shall think just and reasonable, and which shall not exceed the sum of one pound one shilling, except in causes wherein a view is directed, and shall have been had by such juror.

By 24 Geo. 2, c. 18, s. 2, the remuneration of special jurors was first fixed as above. By the Jurors Act, 1870, sect. 22, it was fixed at a guinea a day; but that section having been repealed by 34 Vict. c. 2, the remuneration stands as fixed by the present section.

Tales de circumstantibus.

**37.** Where a full jury shall not appear before any court of assize or nisi prius, or where, after appearance of a full jury, by challenge of any of the parties, the jury is likely to remain untaken for default of jurors, every such court, upon request made for the king by anyone thereto authorized or assigned by the court, or on request made by the parties, plaintiff, or demandant, defendant or tenant, or their respective attornies, in any action or suit, whether popular or private, shall command the sheriff or other minister, to whom the making of the return shall belong, to name and appoint, as often as need shall require, so many of such other able men of the county then present as shall make up a full jury; and the sheriff or other minister aforesaid shall, at such

command of the court, return such men duly qualified as shall be present or can be found to serve on such jury, and shall add and annex their names to the former panel, provided that where a special jury shall have been struck for the trial of any issue, the talesmen shall be such as shall be impannelled upon the common jury panel to serve at the same court, if a sufficient number of such men can be found; and the king, by anyone so authorized or assigned as aforesaid, and all and every the parties aforesaid, shall and may, in each of the cases aforesaid, have their respective challenges to the jurors so added and annexed, and the court shall proceed to the trial of every such issue with those jurors who were before impannelled, together with the talesmen so newly added and annexed, as if all the said jurors had been returned upon the writ or precept awarded to try the issue. 6 *Geo.* 4, *c.* 50, *s.* 37.

See 35 Hen. 8, c. 6; 4 & 5 P. & M. c. 7; 5 Eliz. c. 25; 14 Eliz. c. 9; 7 & 8 Will. 3, c. 32, for the former law of this subject.

It has been held, that in a special jury cause the plaintiff may have a tales without the defendant's consent. (*Gatliff* v. *Bourne*, 2 M. & R. 100.) If neither party pray a tales, the cause goes off for want of jurors. (*Jenkins* v. *Purcel*, 1 Str. 707.)

[THE COMMON LAW PROCEDURE ACT, 1852, ss. 109—113.]

**109.** In any county, except London and Middlesex (*a*), the plaintiff in any action, except replevin, shall be entitled to have the cause tried by a special jury, upon giving notice in writing to the defendant, at such time as would be necessary for a notice of trial, of his intention that the cause shall be so tried; and the defendant or plaintiff in replevin, shall be so entitled, on giving the like notice within the time now limited for obtaining a rule for a special jury; provided that the court or a judge may at any time order that a cause shall be tried by a special jury, upon such terms as they or he shall think fit. Mode of obtaining a special jury in country causes.

**110.** In London and Middlesex special jurors shall be nominated and reduced by and before the under-sheriff and secondary respectively, in like manner as by the master before this act, upon the application of either party entitled to a special jury, and his obtaining a rule for such purpose; and the names of the jurors so struck shall be placed upon a panel, which shall be delivered and annexed to the nisi prius record, in like manner and upon the same terms as hereinbefore provided with reference to the panel of common jurors; and upon the trial the special jury shall be balloted for, and called in the order in which they shall be drawn from the box, in the same manner as common jurors. Special juries in London and Middlesex, how struck.

**111.** Where the defendant in any case, or plaintiff in replevin, gives notice of his intention to try the cause by a special jury, and the venue is in London or Middlesex, the court or a judge, if satisfied that such notice is given for the purpose of delay, may order Remedy for delay by notice of trial by special jury.

(*a*) By the Jurors Act, 1870 (33 & 34 Vict. c. 77), s. 17, the exception for London and Middlesex is abolished.

*C. L. P. Act*, 1852, *ss.* 111—113.

that the cause be tried by a common jury, or make such other order as to the trial of the cause as such court or judge shall think fit.

Notice to sheriff of trial by special jury.

**112.** Where notice has been given to try by special jury, either party may, six days before the first day of the sittings in London or Middlesex, or adjournment day in London, or commission day of the assizes, give notice to the sheriff that such cause is to be tried by a special jury; and in case no such notice be given, no special jury need be summoned or attend, and the cause may be tried by a common jury, unless otherwise ordered by the court or a judge.

If special jury not summoned, cause to be tried by a common jury.

**113.** In all cases where notice is not given to the sheriff that the cause is to be tried by a special jury, and by reason thereof a special jury is not summoned or does not attend, the cause may be tried by a common jury, to be taken from the panel of common jurors, in like manner as if no proceedings had been had to try the cause by a special jury.

[R. G. H. T. 1853.]

**44.** No rule for a special jury shall be granted on behalf of any defendant (or plaintiff in replevin) except on an affidavit, either stating that no notice of trial has been given, or if it has been given, then stating the day for which such notice has been given: and in the latter case no such rule is to be granted unless such application is made for it more than six days before that day; provided that a judge may, on summons, order a rule for a special jury to be drawn up at any time.

**45.** No cause shall be tried by a special jury in Middlesex or London unless the rule for such special jury be served, and the cause marked in the associate's book as a special jury cause, on or before the day preceding the day appointed in Middlesex and London respectively for the trial of special juries.

**46.** There shall be no rule for the sheriff to return a good jury upon a writ of inquiry; but an order shall be made by a judge upon summons for that purpose.

**47.** Sheriffs other than the sheriffs of London and Middlesex, shall, seven days before the commission day, make and keep at their offices, for inspection, a printed copy of the panel of the special jurymen to try the special jury causes at the assizes as directed by "The Common Law Procedure Act, 1852," but such special jury need not be summoned, except notice be given as provided for by the 112th section of the said act.

**48.** The rule for a view may in all cases be drawn up by the officer of the court, on the application of the party, without a motion for that purpose.

**49.** Upon any application for a view, there shall be an affidavit, stating the place at which the view is to be made, and the distance thereof from the office of the under-sheriff, and the sum to be deposited in the hand of the under-sheriff shall be ten pounds in case of a common jury, and sixteen pounds in case of a special jury, if such distance do not exceed five miles, and fifteen pounds in case of a common jury, and twenty-one pounds in case of a special jury if it be above five miles. And if such sum shall be more than sufficient to pay the expenses of the view, the surplus shall forthwith be returned to the attorney of the party who obtained the view; and if such sum shall not be sufficient to pay such expenses, the deficiency shall forthwith be paid by such attorney to the under-sheriff. And the under-sheriff shall pay and account for the money so deposited according to the scale following (that is to say)—

| | £ | s. | d. |
|---|---|---|---|
| For travelling expenses to the under-sheriff, showers, and jurymen, expenses actually paid if reasonable. | | | |
| Fee to the under-sheriff, when the distance does not exceed five miles from his office - - - - - | 1 | 1 | 0 |
| Where such distance exceeds five miles - - - - | 2 | 2 | 0 |
| And in case he shall be necessarily absent more than one day, then for each day after the first a further fee of - - - - - - - - - - - - - | 1 | 1 | 0 |
| Fee to each of the showers the same as the under-sheriff, calculating the distance from their respective places of abode. | | | |
| Fee to each common juryman, per diem - - - - | 0 | 5 | 0 |
| For each special juryman, per diem - - - - - | 1 | 1 | 0 |
| Allowance for refreshment to the under-sheriff, showers and jurymen, whether common or special, each, per diem - - - - - - - - - - - - - | 0 | 5 | 0 |
| To the bailiff for summoning each juryman whose residence is not more than five miles distant from the office of the under-sheriff - - - - - - - | 0 | 2 | 6 |
| And to each whose residence does exceed five miles of such distance - - - - - - - - - - | 0 | 5 | 0 |

## IV.

### IMPRISONMENT FOR DEBT.

[32 & 33 VICT. c. 62.]

*An Act for the Abolition of Imprisonment for Debt, for the Punishment of Fraudulent Debtors, and for other purposes.*
[9th August, 1869.]

BE IT ENACTED BY, &c. as follows:

*Preliminary.*

Short title.

**1.** This act may be cited for all purposes as "The Debtors Act, 1869."

See the policy of the act considered in *Marris* v. *Ingram* (13 Ch. D. 338; 49 L. J., Ch. 123; 41 L. T. 613; 28 W. R. 434), by Jessel, M. R.; in *Barrett* v. *Hammond* (10 Ch. D. 285; 48 L. J., Ch. 249; 27 W. R. 471), by Bacon, V.-C.; and in *Street* v. *Hope* (10 Ch. D. 286 n.), by Malins, V.-C., in especial reference to the amendment effected by the Debtors Act, 1878, p. 526, *post*. Jessel, M. R., held the object of the act to be to punish the fraudulent debtor, while the Vice-Chancellors held that the only object was to procure payment of the money owing.

Extent of act.

**2.** This act shall not extend to Scotland or Ireland.

Commencement and construction of act.

**3.** This act shall not come into operation until the day on which the Bankruptcy Act, 1869, comes into operation, which day is hereinafter referred to as the commencement of this act, and words and expressions defined or explained in the Bankruptcy Act, 1869, shall have the same meaning in this act.

### PART I.

PART I.

*Abolition of Imprisonment for Debt.*

Abolition of imprisonment for debt.

**4.** With the exceptions hereinafter mentioned, no person shall, after the commencement of this act, be arrested or imprisoned for making default in payment of a sum of money.

Exceptions.

There shall be excepted from the operation of the above enactment:

1. Default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract;
2. Default in payment of any sum recoverable summarily before a justice or justices of the peace:
3. Default by a trustee or person acting in a fiduciary capacity and ordered to pay by a court of equity any sum in his possession or under his control:
4. Default by an attorney or solicitor in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the court making the order:

5. Default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any court having jurisdiction in bankruptcy is authorized to make an order: *The Debtors Act*, 1869, *s.* 4.

6. Default in payment of sums in respect of the payment of which orders are in this act authorized to be made:

Provided, first, that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than one year; and secondly, that nothing in this section shall alter the effect of any judgment or order of any court for payment of money except as regards the arrest and imprisonment of the person making default in paying such money. No imprisonment for more than one year.

Under none of these excepted cases ought an attachment to issue ex parte; the debtor should in every case have an opportunity of showing cause that he is not within the exception. (*Ferguson* v. *Ferguson*, L. R., 10 Ch. 661; 44 L. J., Ch. 615.)

*Crown Debts.*] A defendant at the suit of the crown is liable to arrest as if the act had not passed. (*Att.-Gen.* v. *Edmunds*, 22 L. T. 667, per Willes, J.; and see *Re Smith*, 2 Ex. D. 47; 46 L. J., Q. B. 73; 35 L. T. 858.) In the latter case, an order was afterwards made that the crown debtor should sign a promissory note, payable in a month, for the amount of the recognizances and costs, on payment of which he was to be liberated.

*Justices—Sub-sect.* 2.] Costs ordered to be paid by the respondent on appeal to quarter sessions from an affiliation order are within sub-sect. 2. (*R.* v. *Pratt*, L. R., 5 Q. B. 177; 39 L. J., M. C. 73; 18 W. R. 626; *S. C.* nom. *Cole, Ex parte*, 21 L. T. 750.)

*Trustee—Sub-sect.* 3.] A trustee may be attached under sub-sect. 3, although he has parted with the trust money prior to the order for payment, the attachment, however, not issuing in respect of interest only (*Middleton* v. *Chichester*, 40 L. J., Ch. 237; see also *Young* v. *Dallimore*, 22 L. T. 119; 18 W. R. 445); but not in a case where by his own wilful default he has failed to get it into his possession. (*Ferguson* v. *Ferguson*, L. R., 10 Ch. 76; 44 L. J., Ch. 615.) The fact that a trustee promised upon his appointment to make good the deficiency of a former trustee does not make him liable to committal for non-compliance with an order directing him to pay. (*Cuddiford, Ex parte, Hincks, In re*, 45 L. J., Bk. 127; 34 L. T. 666; 24 W. R. 931.) The trustee may be within the subsection, although the money was not in his *sole* possession, as where one of two executors, having power to draw cheques upon a joint account, draws out money and misapplies it. (*Evans* v. *Bear*, L. R., 10 Ch. 76; 31 L. T. 625; 23 W. R. 67.)

As to meaning of "fiduciary capacity," see *Marris* v. *Ingram*, 13 Ch. D. 338, and note to sect. 1, *supra*. The words do not include the promoter of a company. (*Phosphate Sewage Co.* v. *Hartmont*, 25 W. R. 743.)

For "Court of Equity" read "High Court of Justice." (*Marris* v. *Ingram*, 13 Ch. D. 339.)

*Solicitor—Sub-sect.* 4.] Default by a solicitor in payment of balance found due to his client on taxation of a bill of costs is within sub-sect. 4 (*Re Rush*, L. R., 9 Eq. 147; *Re White*, 23 L. T. 387; 19 W. R. 39); but default in payment of costs incurred in resisting an order to tax is not. (*Re Hope*, L. R., 7 Ch. 523; 41 L. J., Ch. 597; 20 W. R. 694.) The default of the solicitor in paying defendant's costs where he has brought an action without the plaintiff's authority is within subsect. 4. (*Jenkins* v. *Fereday*, L. R., 7 C. P. 358; see also *Harvey* v. *Hall*,

*The Debtors Act*, 1869, *s.* 5.

L. R., 16 Eq. 324; *Ball, In re*, L. R., 8 C. P. 104; 42 L. J., C. P. 104.) As to action by solicitor for detaining him beyond the year, see *Greaves* v. *Keen*, 4 Ex. D. 73; 40 L. T. 216; 27 W. R. 416.

*Discharge of Prisoner.*] An order has been said to be necessary for the discharge of the prisoner. (*Re Thompson*, 43 L. J., Ch. 721, per Hall, V.-C.)

Committal for judgment debt.

**5.** Subject to the provisions hereinafter mentioned, and to the prescribed rules, any court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent court.

Provided—(1.) That the jurisdiction by this section given of committing a person to prison shall, in the case of any court other than the superior courts of law and equity, be exercised only subject to the following restrictions; that is to say,

(*a.*) Be exercised only by a judge or his deputy, and by an order made in open court and showing on its face the ground on which it is issued:

(*b.*) Be exercised only as respects a judgment of a superior court of law or equity when such judgment does not exceed fifty pounds, exclusive of costs:

(*c.*) Be exercised only as respects a judgment of a county court by a county court judge or his deputy.

Committal to be for wilful default only.

(2.) That such jurisdiction shall only be exercised where it is proved to the satisfaction of the court that the person making default either has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same.

Proof of the means of the person making default may be given in such manner as the court thinks just; and for the purposes of such proof the debtor and any witnesses may be summoned and examined on oath, according to the prescribed rules.

Jurisdiction in chambers.

Any jurisdiction by this section given to the superior courts may be exercised by a judge sitting in chambers, or otherwise, in the prescribed manner.

For the purposes of this section any court may direct any debt due from any person in pursuance of any order or judgment of that or any other competent court to be paid by instalments, and may from time to time rescind or vary such order.

Persons committed under this section by a superior court may be committed to the prison in which they would have been confined if arrested on a writ of capias ad satisfaciendum, and every order of committal by any superior court shall, subject to the prescribed rules, be issued, obeyed and executed in the like manner as such writ.

As to county courts.

This section, so far as it relates to any county court, shall be deemed to be substituted for sections ninety-eight and ninety-nine of the County Court Act, 1846, and that act and the acts amending the same shall be construed accordingly, and shall extend to orders made by the county court with respect to sums due in pursuance of any order or judgment of any court other than a county court,

No imprisonment under this section shall operate as a satisfac-

tion or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands, goods or chattels of the person imprisoned, in the same manner as if such imprisonment had not taken place.

*The Debtors Act*, 1869, *ss.* 5, 6.

Any person imprisoned under this section shall be discharged out of custody upon a certificate signed in the prescribed manner to the effect that he has satisfied the debt or instalment of a debt in respect of which he was imprisoned, together with the prescribed costs (if any).

An order for payment of costs is within this section. (*Hewitson* v. *Sherwin*, L. R., 10 Eq. 53; 22 L. T. 576; 18 W. R. 802.) Where there is no order to pay by instalments, the power to commit can only be exercised once, although the ability to pay be shown; but where there is an order to pay by instalments, there may be a committal for default on each instalment. (*Horsnail* v. *Bruce*, 42 L. J., C. P. 142; *Evans* v. *Wills*, 1 C. P. D. 229; 45 L. J., C. P. 420; 38 L. T. 679; 24 W. R. 883.)

A married woman, not setting up coverture, may be ordered to pay by instalments under this section (*Dillon* v. *Cunningham*, 42 L. J., Ex. 11); and so may a married man maintained entirely out of his wife's separate estate. (*Harper* v. *Scrimgeour*, 5 C. P. D. 366.

*Jurisdiction of Inferior Court.*] Notwithstanding the words "any court" in the first paragraph of the section, it has been held that the Mayor's Court, London, and other inferior courts of local jurisdiction, cannot act under this section where the debtor is not within their jurisdiction. (*Washer* v. *Elliott*, 1 C. P. D. 169; 45 L. J., C. P. 144; 34 L. T. 56.)

An order under this section does not require renewal at the end of a year, but remains in force until executed. (*Hermitage* v. *Kilpin*, L. R., 9 Ex. 205; 43 L. J., Ex. 127; 30 L. T. 873; 22 W. R. 661.)

*Privilege of Parliament.*] It is conceived that the privilege of peers, which is in force at all times (see *Davis* v. *Lord Rendlesham*, 7 Taunt. 769, and the Acts of Union), and of members of the House of Commons, which is in force during session (see *Cassidy* v. *Steuart*, 2 M. & G. 169), is unaffected by the act, although not expressly saved, and that any person having such privilege, although grammatically within this and the next section, cannot lawfully be imprisoned under either of them.

Mesne process, abolition of.

6. After the commencement of this act a person shall not be arrested upon mesne process in any action.

Power to arrest defendant about to quit England.

Where the plaintiff in any action in any of her Majesty's superior courts of law at Westminster, in which, if brought before the commencement of this act, the defendant would have been liable to arrest, proves at any time before final judgment by evidence on oath, to the satisfaction of a judge of one of those courts, that the plaintiff has good cause of action against the defendant to the amount of fifty pounds or upwards, and that there is probable cause for believing that the defendant is about to quit England unless he be apprehended, and that the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action, such judge may in the prescribed manner order such defendant to be arrested and imprisoned for a period not exceeding six months, unless and until he has sooner given the prescribed security, not exceeding the amount claimed

*The Debtors Act*, 1869, *ss.* 6—10.

in the action, that he will not go out of England without the leave of the court.

Where the action is for a penalty or sum in the nature of a penalty, other than a penalty in respect of any contract, it shall not be necessary to prove that the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action, and the security given (instead of being that the defendant will not go out of England) shall be to the effect that any sum recovered against the defendant in the action shall be paid, or that the defendant shall be rendered to prison.

A debtor arrested on the ground that his absence will prejudice "in the prosecution of the action" cannot be kept in prison after final judgment has been signed. (*Hume* v. *Druyff*, L. R., 8 Ex. 214; 42 L. J., Ex. 145; 29 L. T. 64; see also *Waine* v. *Wilkins*, L. R., 8 Q. B. 107; 42 L. J., Q. B. 95; 27 L. T. 825; *Yorkshire Engine Co.* v. *Wright*, 21 W. R. 15.)

Discharge of persons in custody at the commencement of this act.

**7.** Where any person is, at the commencement of this act, in custody in pursuance of a writ, attachment or other process in any case in which he would not be liable to be arrested or imprisoned after the commencement of this act, such person shall, at the commencement of this act, be discharged from such custody without payment of any fees, but his arrest, imprisonment or discharge shall not affect the creditor's rights or remedies for enforcing the payment of any money due to him, or deprive the creditor of the benefit of any charge or security on any property of the debtor.

Where at the commencement of this act special bail has been given in any action the defendant in which, after the commencement of this act, cannot be imprisoned on making default in satisfying the judgment recovered against him in such action, the condition of such bail, instead of being that the judgment shall be satisfied or the defendant rendered to prison, shall be deemed to be that the defendant shall not go out of England without leave of the court.

Saving for sequestration against property.

**8.** Sequestration against the property of a debtor may, after the commencement of this act, be issued by any court of equity in the same manner as if such debtor had been actually arrested.

See *Sykes* v. *Dyson*, 39 L. J., Ch. 288; and as to writ of sequestration, see Ord. XLVII., p. 253, *ante*.

Saving for Bankruptcy Act, 1869.

**9.** Nothing in this part of this act shall in any way affect any right or power, under the Bankruptcy Act, 1869, to arrest or imprison any person.

Definition of "prescribed."

**10.** In this part of this act the term "prescribed" means as follows:—

As respects the superior courts of common law, prescribed by general rules to be made in pursuance of the Common Law Procedure Act, 1852;

As respects the superior courts of equity, prescribed by general rules and orders to be made in pursuance of the act of the session of the fifteenth and sixteenth years of the reign of her present Majesty, chapter eighty;

As respects the county courts, prescribed by general rules to be made under the County Court Act, 1856; and,

As respects any other court, prescribed by the rules to be made,

with the approval of the Lord Chancellor, by the persons having power to make rules in relation to the practice of such court; or if there be no such persons, by the judge of such court:

*The Debtors Act*, 1869, *ss.* 10—27.

And general rules and orders may respectively be made by such authorities as aforesaid, for the purpose of carrying into effect this part of this act.

See R. G. M. T. 1869, set out at length in Day's C. L. P. Acts, ed. 4, p. 529; Chancery Order of Feb. 7th, 1870, Rules 10—18, set out in Morgan's Chancery Acts and Orders, ed. 5, p. 302.

## PART II.

PART II.

[**11—23.** *Punishment of Fraudulent Debtors.*]

## PART III.

PART III.

*Warrants of Attorney, Cognovits, and Orders for Judgment.*

Warrants of attorney and cognovit actionem to be executed in the presence of an attorney on behalf of the person.

**24.** After the commencement of this act, a warrant of attorney to confess judgment in any personal action or cognovit actionem given by any person, shall not be of any force unless there is present some attorney of one of the superior courts on behalf of such person expressly named by him, and attending at his request, to inform him of the nature and effect of such warrant or cognovit before the same is executed, which attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be attorney for the person executing the same, and state that he subscribes as such attorney.

Warrant, &c. not formally executed invalid.

**25.** A warrant of attorney to confess judgment or cognovit actionem not executed in manner aforesaid shall not be rendered valid by proof that the person executing the same did, in fact, understand the nature and effect thereof, or was fully informed of the same.

Filing of warrant of attorney and cognovit actionem.

**26.** Where in an action a warrant of attorney to confess judgment or a cognovit actionem is given, and the same, or a true copy thereof, is not filed with the officer acting as clerk of the docquets and judgments in the Court of Queen's Bench within twenty-one days next after the execution thereof, as required by the act of the third year of the reign of King George the Fourth (chapter thirty-nine), "for preventing frauds upon creditors by secret warrants of attorney to confess judgment," the same shall be deemed fraudulent and shall be void; and if any such warrant of attorney or cognovit actionem so filed was given subject to any defeasance or condition, such defeasance or condition shall be written on the same paper or parchment with the warrant or cognovit before the filing thereof, otherwise the warrant or cognovit shall be void.

Filing of judge's order to enter up judgment.

**27.** Where a judge's order, made by consent, is given by a defendant in a personal action, whereby the plaintiff is authorized forthwith or at any future time to sign or enter up judgment, or to issue or to take out execution, whether such order is made subject to any defeasance or condition or not, then if the action is in the Court of Queen's Bench the order, and if the action is in any other

*The Debtors Act*, 1869, *ss.* 27—29.

court a true copy of the order, shall, together with an affidavit of the time of such consent being given, and a description of the residence and occupation of the defendant, be filed with the officer acting as clerk of the docquets and judgments in the Court of Queen's Bench within twenty-one days after the making of the order, otherwise the order, and any judgment signed or entered up thereon, and any execution issued or taken out on such judgment, shall be void.

Application of 3 Geo. 4, c. 39, and 6 & 7 Vict. c. 66, to judge's orders.

**28.** The provisions of the said act of the third year of King George the Fourth, and of the act of the session of the sixth and seventh years of her Majesty's reign (chapter sixty-six), "to enlarge the provisions of an act for preventing frauds upon creditors by secret warrants of attorney to confess judgment," for liberty to file a warrant of attorney or cognovit actionem, or a copy thereof, with the clerk of the docquets and judgments, and for that clerk to make certain entries and search in relation thereto, and for entering satisfaction thereon, and for fees for search, and filing and taking office copies, shall extend and be applicable to every such judge's order.

Exemption from act of foreign attachment.

**29.** Nothing in this act contained shall affect the custom of foreign attachment as exercised by any competent court, or the proceedings in relation to such custom.

Foreign attachment authorizes detention only until final judgment (*Waine* v. *Wilkins*, L. R., 8 Q. B. 107; 42 L. J., Q. B. 95; 27 L. T. 825); and the present act does not authorize any further detention. (*Ib.*, and see note to sect. 6, *ante*.)

## [41 & 42 VICT. c. 54.]

*An Act to amend the Debtors Act*, 1869, *and the Debtors Act* (*Ireland*), 1872. [13th August, 1878.]

BE it enacted by, &c., as follows:

Court or judge to have discretion in cases within exceptions 3 and 4 in 32 & 33 Vict. c. 62, s. 4, and 35 & 36 Vict. c. 57, s. 5, respectively.

**1.** In any case coming within the exceptions numbered 3 and 4 in the fourth section of the Debtors Act, 1869, and in the fifth section of the Debtors Act (Ireland), 1872, respectively, or within either of those exceptions, any court or judge, making the order for payment, or having jurisdiction in the action or proceeding in which the order for payment is made, may inquire into the case, and (subject to the provisoes contained in the said sections respectively) may grant or refuse, either absolutely or upon terms, any application for a writ of attachment, or other process or order of arrest or imprisonment, and any application to stay the operation of any such writ, process, or order, or for discharge from arrest or imprisonment thereunder.

This enactment was suggested by *Evans* v. *Bear* (L. R., 10 Ch. 76), in which it was held that the Court had no discretion, but was bound to issue a writ of attachment. (See also *Marris* v. *Ingram*, 13 Ch. D. 338; and note to sect. 1 of the Debtors Act, 1869, *supra*.)

*The Debtors Act*, 1878.

Short title and construction.

**2.** This act may be cited as the Debtors Act, 1878, and shall be construed as one with the Debtors Act, 1869, as regards England, and as one with the Debtors Act (Ireland), 1872, as regards Ireland; and the Debtors Act, 1869, and this act may be cited as the Debtors Acts, 1869 and 1878, and the Debtors Act (Ireland), 1872, and this act may be cited as the Debtors Acts (Ireland), 1872 and 1878.

# V.

## EVIDENCE ON COMMISSION.

[1 WILL. 4, c. 22.]

*An Act to enable Courts of Law to order the Examination of Witnesses upon Interrogatories and otherwise.*

[30th March, 1831.]

WHEREAS great difficulties and delays are often experienced, and sometimes a failure of justice takes place, in actions depending in courts of law, by reason of the want of a competent power and authority in the said courts to order and enforce the examination of witnesses, when the same may be required, before the trial of a cause: And whereas by an act passed in the thirteenth year of the reign of his late Majesty King George the Third, intituled An Act for the establishing certain Regulations for the better management of the Affairs of the East India Company, as well in India as in Europe, certain powers are given and provisions made for the examination of witnesses in India in the cases therein mentioned; and it is expedient to extend such powers and provisions: Be it therefore enacted, &c., that all and every the powers, authorities, provisions, and matters contained in the said recited act, relating to the examination of witnesses in India, shall be and the same are hereby extended to all colonies, islands, plantations, and places under the dominion of his Majesty in foreign parts, and to the judges of the several courts therein, and to all actions depending in any of his Majesty's courts of law at Westminster, in what place or country soever the cause of action may have arisen, and whether the same may have arisen within the jurisdiction of the court to the judges whereof the writ or commission may be directed, or elsewhere, when it shall appear that the examination of witnesses under a writ or commission issued in pursuance of the authority hereby given will be necessary or conducive to the due administration of justice in the matter wherein such writ shall be applied for.

13 Geo. 3, c. 63.

Powers of the recited act, as to the examination of witnesses in India, extended to the colonies, &c., and to all actions when examination by commission shall appear necessary.

The recited act (13 Geo. 3, c. 63), which was one of the acts for the regulation of the East India Company, provided for the issuing of a writ to the judges of the courts in India, "who," it proceeds, "are hereby respectively authorized and required accordingly to hold a court with all convenient speed for the examination of witnesses and receiving other proofs, and in the meantime to cause such public notice to be given of the holding the said court, and to issue such summons or other process as may be requisite for the attendance of witnesses, and of the agents or counsel of all or any of the parties respectively, and to adjourn from time to time, as occasion may require, and such examination as aforesaid shall be then and there openly and publicly taken vivâ voce in the said court, upon the respective oaths of witnesses and the oaths of skilful interpreters, administered according to the forms of their several religions, and shall by some sworn officer of such court be reduced into one or more writing or writings on parchment, in

*Evidence on Commission.*
1 *Will.* 4, *c.* 22.

case any duplicate or duplicates should be required by or on behalf of any of the parties interested, and shall be sent to his Majesty in his Court of King's Bench, closed up, and under seal of two or more of the judges of the said court, and one or more of the said judges shall deliver the same to the agent or agents of the party or parties requiring the same, which said agent or agents (or in case of his or their death, the person into whose hands the same shall come) shall deliver the same to one of the clerks in court of his Majesty's Court of King's Bench, in the public office, and make oath that he received the same from the hands of one or more of the judges of such court of India (or if such agent be dead, in what manner the same came into his hands), and that the same has not been opened or altered since he so received it, which said oath such clerk in court is hereby authorized and required to administer; and such depositions, being duly taken and returned according to the true intent and meaning of this act, shall be allowed and read, and shall be deemed as good and competent evidence as if such witness had been present and sworn, and examined vivâ voce at any trial in his Majesty's said Court of King's Bench, any law or usage to the contrary notwithstanding, and all parties concerned shall be entitled to take copies of such depositions at their own costs and charges." The 44th section relates to civil proceedings, and is as follows:—

"Whereas his Majesty's subjects are liable to be defeated of their several rights, titles, debts, dues, demands or suits for which they have cause arising in India against other subjects of his Majesty: Now, for preventing such failure of justice, be it further enacted, that when and as often as the said united company, or any person or persons whatsoever, shall commence and prosecute any action or suit in law or equity, which cause hath arisen, or shall hereafter arise, in India against any other person or persons whatever in any of his Majesty's courts at Westminster, it shall and may be lawful for such courts respectively upon motion there to be made to provide and award such writ or writs, in the nature of a mandamus or commission as aforesaid, to the chief justices and judges of the said Supreme Court of Judicature for the time being, or the judges of the Mayor's Court at Madras, Bombay or Bencoolen, as the case may require, for the examination of witnesses as aforesaid, and such examination being duly returned shall be allowed and read, and shall be deemed good and competent evidence at any trial or hearing between the parties in such cause or action, in the same manner in all respects as if the several directions hereinbefore prescribed and enacted in that behalf were again repeated." The Mayor's Courts in Madras and Bombay are now replaced by Courts of Judicature. Bencoolen is no longer British. The strict rule of the common law courts was that all evidence should be given orally and in open court, and before these acts it was necessary to file a bill for a commission in Chancery. (*Bridges* v. *Fisher*, 1 Bing. N. C. 510.)

The 44th section of the recited act, it will be observed, applies to suits both at law and in equity. The Act of Will. 4 applies only to the courts of law at Westminster, but the effect of the Judicature Act is to apply it to all the divisions of the High Court; and in the Chancery Division, where evidence, except by agreement, is to follow the common law practice, it will be called into requisition. Scotland is not included among "places in foreign parts under the dominion of his Majesty," and the application to examine witnesses in that country must be under sect. 4. (*Wainwright* v. *Bland*, 3 Dowl. 653.) A kindred subject to the taking of evidence on commission out of the jurisdiction is the ascertainment of foreign law. This may be done by any court in one part of the

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Queen's dominions stating a case for the opinion of a superior court in any other, with an appeal to her Majesty in council or the House of Lords, if the court giving its opinion is subject to such an appeal. (22 & 23 Vict. c. 63.) The act 24 Vict. c. 11, gives the crown power to enter into conventions with foreign states for the mutual ascertainment of their and our law, when necessary for the purposes of actions, and cases may be stated for the opinion of British and foreign courts; but no convention under that act has as yet (February, 1881), been entered into.

*Form of Commission.*] For form of commission, see R. S. C., Appendix G, No. 11, *ante*, p. 380.

Judges to whom the commission is directed empowered to enforce the attendance of witnesses.

**2.** When any writ or commission shall issue under the authority of the said recited act, or of the power hereinbefore given by this act, the judge or judges to whom the same shall be directed shall have the like power to compel and enforce the attendance and examination of witnesses as the court whereof they are judges does or may possess for that purpose in suits or causes depending in such court.

Costs of writs to be in the discretion of the court.

**3.** The costs of every writ or commission to be issued under the authority of the said recited act, or of the power hereinbefore given by this act, in any action at law depending in either of the said courts at Westminster, and of the proceedings thereon, shall be in the discretion of the court issuing the same.

Courts may order the examination of witnesses within their jurisdiction by an officer of the court; or may order a commission for that purpose out of their jurisdiction.

**4.** It shall be lawful to and for each of the said courts at Westminster, and also the Court of Common Pleas of the county palatine of Lancaster, and the Court of Pleas of the county palatine of Durham, and the several judges thereof, in every action depending in such court, upon the application of any of the parties to such suit, to order the examination on oath, upon interrogatories or otherwise, before the master or prothonotary of the said court, or other person or persons to be named in such order, of any witnesses within the jurisdiction of the court where the action shall be depending, or to order a commission to issue for the examination of witnesses on oath at any place or places out of such jurisdiction, by interrogatories or otherwise, and by the same or any subsequent order or orders to give all such directions touching the time, place, and manner of such examination, as well within the jurisdiction of the court wherein the action shall be depending as without, and all other matters and circumstances connected with such examinations, as may appear reasonable and just.

The affidavit in support of the summons should state that the witnesses are material and necessary, and that they are out of the jurisdiction, or will be out of the jurisdiction at the trial, or that it is highly probable they will be unable to attend through illness.

Compelling attendance of witnesses, or production of documents.

**5.** When any rule or order shall be made for the examination of witnesses within the jurisdiction of the court wherein the action shall be depending, by authority of this act, it shall be lawful for the court, or any judge thereof, in and by the first rule or order to be made in the matter, or any subsequent rule or order, to command the attendance of any person to be named in such rule or order for the purpose of being examined, or the production of any writings or other documents to be mentioned in such rule or order, and to direct the attendance of any such person to be at his own

*Evidence on Commission.* 1 *Will.* 4, *c.* 22.

place of abode, or elsewhere, if necessary or convenient so to do; and the wilful disobedience of any such rule or order shall be deemed a contempt of court, and proceedings may be thereupon had by attachment (the judge's order being made a rule of court before or at the time of the application for an attachment), if, in addition to the service of the rule or order, an appointment of the time and place of attendance in obedience thereto, signed by the person or persons appointed to take the examination, or by one or more of such persons, shall be also served together with or after the service of such rule or order: provided always, that every person whose attendance shall be so required shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial: provided also, that no person shall be compelled to produce under any such rule or order, any writing or other document that he would not be compellable to produce at a trial of the cause.

Disobedience to be deemed a contempt of court.

Payment of expenses.

Production of documents.

6. It shall be lawful for any sheriff, gaoler, or other officer having the custody of any prisoner, to take such prisoner for examination under the authority of this act, by virtue of a writ of habeas corpus to be issued for that purpose, which writ shall and may be issued by any court or judge under such circumstances and in such manner as such court or judge may now by law issue the writ commonly called a writ of habeas corpus ad testificandum.

Prisoners may be removed by habeas corpus for examination.

7. It shall be lawful for all and every person authorized to take the examination of witnesses by any rule, order, writ, or commission made or issued in pursuance of this act, and he and they are hereby authorized and required, to take all such examinations upon the oath of the witnesses, or affirmation in cases where affirmation is allowed by law instead of oath, to be administered by the person so authorized, or by the judge of the court wherein the action shall be depending; and if upon such oath or affirmation any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and shall and may be indicted and prosecuted for such offence in the county wherein such evidence shall be given, or in the county of Middlesex if the evidence be given out of England.

Examinations of witnesses to be taken upon oath.

Perjury.

8. It shall and may be lawful for the master, prothonotary, or any other persons to be named in any such rule or order as aforesaid for taking any examination in pursuance thereof, and he and they are hereby required, to make, if need be, a special report to the court touching such examination, and the conduct or absence of any witness or other person thereon or relating thereto; and the court is hereby authorized to institute such proceedings and make such order and orders upon such report as justice may require, and as may be instituted and made in any case of contempt of the court.

Report by examiners upon the conduct or absence of witnesses.

9. The costs of every rule or order to be made for the examination of witnesses under any commission or otherwise by virtue of this act, and of the proceedings thereupon, shall (except in the case hereinbefore provided for) be costs in the cause, unless other-

Costs of the order for examination may be made costs in the cause.

*Evidence on Commission.* 1 *Will.* 4, *c.* 22.

wise directed either by the judge making such rule or order, or by the judge before whom the cause may be tried, or by the court.

Restriction as to the reading of examinations or depositions without consent of the party.

**10.** No examination or deposition to be taken by virtue of this act shall be read in evidence at any trial without the consent of the party against whom the same may be offered, unless it shall appear to the satisfaction of the judge that the examinant or deponent is beyond the jurisdiction of the court, or dead, or unable from permanent sickness or other permanent infirmity to attend the trial; in all or any of which cases the examinations and depositions certified under the hand of the commissioners, master, prothonotary, or other person taking the same, shall and may, without proof of the signature to such certificate, be received and read in evidence, save all just exceptions.

This section will now apply to the Chancery Division, in cases where evidence is not taken by consent on affidavit. The conditions imposed must be proved by oral evidence, and they have been strictly construed. Where a deponent was on board ship in the Thames, his deposition was not allowed to be used (*Carruthers* v. *Graham*, 1 Car. & M. 5); and it seems that pregnancy is not a permanent sickness within the section. (1 Moore & S. 384.)

## VI.

### Action in Formâ Pauperis.

[11 Hen. 7, c. 12.]

*An Acte to admitt such Persons as are Poore to sue in Formâ Pauperis.*

Prayen the Commons in this present parliament assembled that where the king our sovereign Lord of his most gracious disposition willeth and intendeth indifferent justice to be had and ministered according to his common laws to all his true subjects, as well to poor as rich, which poor subjects be not of ability ne power to sue according to the laws of this land for the redress of injuries and wrongs to them daily done, as well concerning their persons and their inheritance as other cause, for remedy whereof in the behalf of the poor persons of this land not able to sue for their remedy after the course of the common law: Be it enacted that, every poor person or persons which have or hereafter shall have cause of action or actions against any person or persons within this realm shall have (*a*) [by the discretion of the Chancellor of this realm for the time being] writ or writs [original and writs of subpœna] according to the nature of their causes, therefore nothing paying to your highness for the seals of the same, nor to any person for the writing of the writ or writs to be hereafter sued, and that the said Chancellor for the time being shall assign such of the clerks which shall do and use the making and writing of the same writs to write the same ready to be sealed, and also learned counsel and attornies for the same without the reward taken therefor: and after the said writ or writs be returned, if it be afore the king in his Bench, the justices there shall assign to the same poor person or persons counsel learned by their discretions, which shall give their counsels nothing taking for the same, and likewise the justices shall appoint attorney and attornies for the same poor person or persons, and all other officers requisite and necessary to be had for the speed of the said suits to be had and made, which shall do their duties without any reward for their counsels, help and business in the same, and the same law and order shall be observed and kept of all such suits to be made afore the king's justices of his common place and barons of his Exchequer, and all other justices in the courts of record where any suits shall be.

Assignment of counsel and solicitor to pauper.

This statute did not apply to Courts of Equity, but those courts adopted a similar principle. (*Wilkinson* v. *Belsher*, 2 Bro. C. C. 272.) As to defending *in formâ pauperis*, see note to Ch. C. Ord. VII. 9.)

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(*a*) The words within brackets refer to an obsolete procedure.

*Action in Formâ pauperis.*

## CONSOLIDATED ORDERS OF THE COURT OF CHANCERY: ORDER VII.

Certificate of counsel.

8. No person shall be admitted to prosecute any suit in this court in formâ pauperis without a certificate of counsel that he conceives the case to be proper for relief in this court.

This rule of the Court of Chancery, as well as the Common Law Rules which follow, will now apply to the High Court, by virtue of sect. 73 of the Judicature Act, 1873.

## GENERAL RULES OF HILARY TERM, 1853.

Affidavit of pauper.

121. No person shall be permitted to sue in formâ pauperis unless the case laid before counsel for his opinion, and his opinion thereon with an affidavit of the party, or his attorney, that the same case contains a full and true statement of all the material facts to the best of his knowledge or belief, shall be produced before the court or judge to whom application may be made, and no fees shall be payable by a pauper to his counsel and attorney, nor at the offices of the masters or associates, or at the judges' chambers, by reason of a verdict being found for such pauper exceeding five pounds.

An order to sue *in formâ pauperis* may be obtained on motion, but the usual practice in civil cases is to obtain it by petition to the Chief of the Division, or the Master of the Rolls. The pauper must make an affidavit that he is not worth 5*l.* in the world, except his clothes and his interest in the suit. Notice of the order must be served on the opposite party. (*Ballard* v. *Catling*, 2 Keen, 606.) A pauper may be dispaupered, if he obtain the order improperly, or become possessed of property, or act vexatiously. The order, if made *pendente lite*, has no retrospective effect, so that the pauper is liable to pay costs previously incurred; and, by a rule of the Exchequer (3 Geo. 1; Man. Ex. Pr., 1st edit.), must give security for those costs. (*Jones* v. *Peers*, 1 M'Clel. & Y. 282.) The effect of an order to sue *in formâ pauperis* is that the pauper does not pay court fees; if he fails he pays no costs to the opposite party, and if he succeeds he obtains no costs but money out of pocket. If successful, he cannot recover fees to counsel or solicitor.

Costs of pauper suing.

122. Where a pauper omits to proceed to trial pursuant to notice, he may be called upon by a rule to show cause why he should not pay costs, though he has not been dispaupered, and why all further proceedings should not be stayed until such costs shall be paid.

## GENERAL RULES OF TRINITY TERM, 1853.

28. A person admitted to sue in formâ pauperis shall not, in any case, be entitled to costs, unless by order of the court or judge.

## CONSOLIDATED ORDERS OF THE COURT OF CHANCERY: ORDER VII.

No fee payable to counsel or solicitor.

9. After an admittance to sue or defend in formâ pauperis, no fee, profit, or reward shall be taken of the pauper by any counsel or solicitor for the despatch of the pauper's business during the time it shall depend in court and he shall continue in formâ pauperis, nor shall any agreement be made for any recompense or reward afterwards. Any person offending herein shall be deemed

guilty of a contempt of court; and the party admitted who shall give any such fee, or reward, or make any such agreement, shall be from thenceforth dispaupered, and not be afterwards admitted again in that suit to sue or defend in formâ pauperis. *Action in Formâ pauperis.*

The Court of Chancery has always admitted defendants to defend *in formâ pauperis*, as this rule implied, although the Act of Henry VII. does not apply to defendants, nor did the Courts of Common Law allow them the privilege in civil actions. (*Oldfield* v. *Cobbett*, Phil. 163.) In indictments, the Court of Queen's Bench allowed defences *in formâ pauperis*. (*R.* v. *Nicholson*, 8 Dowl. 489.) Defendants in the High Court will be able to defend *in formâ pauperis*, as this is a "method of procedure in force" in the Court of Chancery, now applied generally, by sect. 73 of the Judicature Act, 1873, to the High Court.

10. The counsel or solicitor assigned by the court to assist a person in formâ pauperis, either to sue or defend, may not refuse so to do unless such counsel or solicitor satisfy the judge who granted the admittance with some good reason for his unwillingness to be so assigned. Counsel and solicitor bound to assist.

11. No process of contempt shall be issued at the instance of any person suing or defending in formâ pauperis until it be signed by his solicitor in the suit. And no notice of motion served or petition presented on behalf of any person admitted to sue or defend in formâ pauperis (except for the discharge of his solicitor) shall be of any effect; nor shall any person served with such notice or petition be bound to appear thereon, unless such notice or petition be signed by the solicitor of such person so suing or defending. And such solicitor shall take care that no process be taken out and that no such notice or petition be served needlessly, or for vexation, but upon just and good grounds. Process of contempt at instance of pauper.

[23 HEN. 8, c. 5.]

*An Act that the Defendant shall recover Costs against the Plaintiff, if the Plaintiff be Nonsuited, or if the Verdicte passe against him.* [A.D. 1531.]

2. Provided always, that all and every such poor person or persons, being plaintiff or plaintiffs in any of the said actions, bills or plaints which, at the commencement of their suits or actions, be admitted by the discretion of the judge or judges where such suits or actions shall be pursued or taken to have their process and council of charity without any money or fee paying for the same, shall not be compelled to pay any costs by virtue and force of this statute, but shall suffer other punishment as by the discretion of the justices or judge, afore whom such suits shall depend, shall be thought reasonable, anything afore rehearsed to the contrary hereof notwithstanding. Pauper nonsuited not to pay costs, but to suffer other punishment.

## VII.

## APPEALS FROM, AND REMOVALS TO AND FROM, COUNTY COURTS.

[COUNTY COURT ACT, 1846, 9 & 10 VICT. c. 95.]

Removal by certiorari where more than 5*l.* claimed.

**90.** AND BE IT ENACTED, that no plaint entered in any court holden under this act, shall be removed or removable from the said court into any of her Majesty's superior courts of record, by any writ or process, unless the debt or damage claimed shall exceed five pounds, and then only by leave of a judge of one of the said superior courts, in cases which shall appear to the judge fit to be tried in one of the superior courts, and upon such terms as to payment of costs, giving security for debt or costs, or such other terms as he shall think fit.

As to whether damage exceeds five pounds, see *Box* v. *Green*, 9 Ex. 503; *Joseph* v. *Henry*, 19 L. J., Q. B. 369.

[COUNTY COURT ACT, 1850, 13 & 14 VICT. c. 61.]

Appeal by special case.

**14.** That if either party in any cause of the amount to which jurisdiction is given to the county courts by this act shall be dissatisfied with the determination or direction of the said court in point of law, or upon the admission or rejection of any evidence, such party may appeal from the same to any of the superior courts of common law at Westminster [*two or more of the puisne judges whereof shall sit out of term as a court of appeal for that purpose* (*a*)] provided that such party shall, within ten days after such determination or direction, give notice of such appeal to the other party, or his attorney, and also give security, to be approved by the clerk of the court for the costs of the appeal, whatever be the event of the appeal, and for the amount of the judgment, if he be the defendant and the appeal be dismissed; provided, nevertheless, that such security so far as regards the amount of the judgment, shall not be required in any case where the judge of the county court shall have ordered the party appealing to pay the amount of such judgment into the hands of the clerk of the county court in which such action shall have been tried, and the same shall have been paid accordingly, and the said court of appeal may either order a new trial on such terms as it thinks fit, or may order judgment to be entered for either party, as the case may be, and may make such order with respect to the costs of the said appeal as such court may think proper; and such orders shall be final.

The notice may be waived (*Park Gate Iron Co.* v. *Coates*, L. R., 5 C. P. 634), and generally it is enough if the appellant comply, to the best of his power, with the provisions of the statute. (*Francis* v. *Dowdeswell*, L. R., 9 C. P. 423.) The security, as well as the notice, must be given within the ten days. (*Stone* v. *Dean*, 27 L. J., Q. B. 319.)

The Court of Appeal cannot enter judgment. (*Jonas* v. *Adams*, 20 L. J., Q. B. 397.)

Appeal to be in form of special case.

**15.** That such appeal shall be in the form of a case agreed on by both parties, or their attorneys, and if they cannot agree the judge of the county court, upon being applied to by them or

(*a*) Words in brackets repealed by 15 & 16 Vict. c. 54, s. 2.

their attorneys, shall settle the case and sign it, and such case shall be transmitted by the appellant to the rule department of the master's office of the court in which the appeal is to be brought.

Exclusion of other modes of questioning county court judgment.

**16.** That no judgment, order, or determination given or made by any judge of a county court, nor any cause or matter brought before him or pending in his court shall be removed by appeal, motion, writ of error, certiorari, or otherwise, into any other court whatever, save and except in the manner and according to the provisions hereinbefore mentioned.

This section does not take away the power of removal by *certiorari* given by 9 & 10 Vict. c. 95, s. 90, *ante*, p. 536. (*Mungean* v. *Wheatley*, 6 Ex. 88; *Parker* v. *Bristol and Exeter Railway Co.*, 6 Ex. 184.)

[COUNTY COURT ACT, 1856, 19 & 20 VICT. c. 108.]

Trial by consent of all actions.

**23.** The county courts shall not have jurisdiction to try any action for criminal conversation; but with respect to all other actions, which may be brought in any superior court of common law, if both parties shall agree by a memorandum signed by them or their respective attorneys that in any county court named in such memorandum shall have power to try such action, such county court shall have jurisdiction to try the same.

Remitter to County Court of actions of contract where not more than 50*l.* claimed.

[*Compare s.* 7 *of County Court Act*, 1867, *ante*, *p.* 484.]

**26.** Where in any action of contract brought in a superior court the claim indorsed on the writ does not exceed fifty pounds, or where such claim, though it originally exceeded fifty pounds, is reduced by payment into court, payment, an admitted set-off, or otherwise, to a sum not exceeding fifty pounds, a judge of a superior court, on the application of either party, after issue joined, may, in his discretion, and on such terms as he shall think fit, order that the cause be tried in any county court which he shall name; and thereupon the plaintiff shall lodge with the registrar of such court such order and the issue; and the judge of such court shall appoint a day for the hearing of the cause, notice whereof shall be sent by post, or otherwise, by the registrar to both parties or their attorneys; and after such hearing the registrar shall certify the result to the master's office of such superior court, and judgment in accordance with such certificate may be signed in such superior court.

Section 7 of the County Court Act, 1867, *ante*, p. 484, which is in *pari materiâ* with this section, applies only within eight days after service of the writ; the present section applies at any time after issue joined. Another difference between the two sections is, that under this section the action, after being remitted, remains in the High Court for purposes of signing judgment and costs; whereas under sect. 7 of the Act of 1867, an action, after being remitted, becomes a County Court action for all purposes.

In the absence of special terms in the order, the parties are entitled to a jury (*Ford* v. *Taylor*, 3 C. P. D. 21); but in taxation of costs the master may follow the county court scale so far as regards proceedings in the county court. (*Wheatcroft* v. *Foster*, E. B. & E. 737.)

Judgment is signed without motion for judgment under R. S. C., Ord. XL. (*Scott* v. *Freeman*, 2 Q. B. D. 177.)

The jurisdiction to grant a new trial is in the High Court (*Balmforth* v. *Pledge*, L. R., 1 Q. B. 427); but it has been held that the time for moving is not regulated by the Rules of the Supreme Court, Order XXXIX., *ante*, p. 220. (*London* v. *Roffey*, 3 Q. B. D. 6.)

Certiorari for removal into High Court of actions for claims of 5*l.* or less.

**38.** Any action commenced in a county court for a claim not exceeding five pounds may be removed by writ of certiorari into a superior court, if such superior court or a judge of a superior court shall deem it desirable that the cause shall be tried in such superior court; and if the party applying for such writ shall give security, to be approved of by one of the masters of such superior court, for the amount of the claim and the costs of the trial, not exceeding in all one hundred pounds, and shall further assent to such terms, if any, as the superior court or judge shall think fit to impose.

The defendant is not bound to follow the action into the High Court. (*Garton* v. *Great Western Railway Co.*, 28 L. J., Q. B. 203.)

Objection by defendant to trial in county court of action for claim of more than 20*l.* in contract or more than 5*l.* in tort.

**39.** If in any action of contract the plaintiff shall claim a sum exceeding twenty pounds, or if in any action of tort the plaintiff shall claim a sum exceeding five pounds, and the defendant shall give notice that he objects to the action being tried in the county court, and shall give security, to be approved of by the registrar, for the amount claimed and the costs of trial in one of the superior courts of common law, not exceeding in the whole the sum of one hundred and fifty pounds, all proceedings in the county court in any such action shall be stayed; but if in any such action the defendant do not object to the same being tried by the county court, or shall fail to give the security aforesaid, the county court shall dispose of the cause in the usual way; and the entry of the plaint in such action shall be a sufficient commencement of the suit to prevent the operation of any statute of limitation applicable to such claim; provided that nothing herein contained shall prevent the removal of any cause from a county court by writ of certiorari in the cases and subject to the conditions in and subject to which such cause may now be removed.

As to approval of security by registrar, see *In re Young and Brompton, &c. Waterworks Co.*, 31 L. J., Q. B. 14.

Rule for certiorari or prohibition to be stay of proceedings.

**40.** The granting by any of the superior courts or by any judge thereof of a rule or summons to show cause why a writ of certiorari or prohibition should not issue to a county court, shall, if the superior court or a judge thereof so direct, operate as a stay of proceedings in the cause to which the same shall relate until the determination of such rule or summons, or until such superior court or judge shall otherwise order; and the judge of the county court shall from time to time adjourn the hearing of such cause to such day as he shall think fit until such determination or until such order be made; but if a copy of such rule or summons shall not be served by the party who obtained it on the opposite party and on the registrar of the county court two clear days before the day fixed for the hearing of the cause, the judge of the county court may, in his discretion, order the party who obtained the rule or summons to pay all the costs of the day, or so much thereof as he shall think fit, unless the superior court or a judge thereof shall have made some order respecting such costs.

Notice to registrar of certiorari or prohibition.

**41.** Where a writ of certiorari or of prohibition addressed to a judge of a county court shall have been granted by a superior court or a judge thereof, on an ex parte application, and the party who obtained it shall not lodge it with the registrar, and give notice to

the opposite party that it has issued, two clear days before the day fixed for hearing the cause to which it shall relate, the judge of the county court may, in his discretion, order the party who obtained the writ to pay all the costs of the day, or so much thereof as he shall think fit, unless the superior court or a judge thereof shall have made some order respecting such costs.

Prohibition to be dealt with summarily.

**42.** When an application shall be made to a superior court or a judge thereof for a writ of prohibition to be addressed to a judge of a county court, the matter shall be finally disposed of by rule or order, and no declaration or further proceedings in prohibition shall be allowed.

A prohibition may be partial. (*Ex parte Walsh*, 1 E. & B. 383.) An appeal lies from the prohibition to the Court of Appeal. (*Barton* v. *Titchmarsh*, 42 L. T. 610.)

[County Court Equitable Jurisdiction Act, 1865, 28 & 29 Vict. c. 99.]

Appeal in equity actions.

**18.** If any party in a suit or matter under this act shall be dissatisfied with the determination or direction of a judge of a county court on any matter of law or equity, or on the admission or rejection of any evidence, such party may appeal from the same to the Vice-chancellor authorized as aforesaid (*a*); provided that such party shall within thirty days after such determination or direction, give notice of such appeal to the other party, or his attorney, and also deposit with the registrar of the county court the sum of ten pounds as security for the costs of the appeal; and the said court of appeal may make such final or other decree or order as it shall think fit, and may also make such order with respect to the costs of the said appeal as such court may think proper; and such orders shall be final: provided that nothing herein contained shall authorize any party to appeal against any decision of a county court, given upon any question as to the value of any real or personal property, for the purpose of determining the question of the jurisdiction of the court under this act, nor to appeal against the decision of a county court on the ground that the proceedings might or should have been taken in any other county court.

[County Court Act, 1867, 30 & 31 Vict. c. 142.]

Appeal by right in ejectment, and by leave in all actions.

* P. 536.

**13.** An appeal from the decision of a county court on the same grounds and subject to the same conditions as are provided by section fourteen of the act of the thirteenth and fourteenth years of the reign of her present Majesty, chapter sixty-one,* shall be allowed in all actions of ejectment, and in all actions in which the title to any corporeal or incorporeal hereditament shall have come in question, and with the leave of the judge, an appeal shall be allowed in actions in which an appeal is not now allowed, if the judge shall think it reasonable and proper that such appeal should be allowed.

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(*a*) *i. e.*, by the Lord Chancellor as under sect. 9, but the appeal under the Judicature Act is to the divisional court under sect. 45 of the Act of 1873, *ante*, p. 40.

[COUNTY COURT ADMIRALTY JURISDICTION ACT, 1868, 31 & 32 VICT. c. 71.]

Appeal in Admiralty actions.

**26.** An appeal may be made to the High Court of Admiralty of England from a final decree or order of a county court in an Admiralty cause, and, by permission of the judge of the county court, from any interlocutory decree or order therein, on security for costs being first given, and subject to such other provisions as general orders shall direct.

50*l.* limit.

**31.** No appeal shall be allowed unless the amount decreed or ordered to be due exceeds the sum of fifty pounds.

Conduct of sale in High Court.

**32.** On an appeal under this act, the judge of the High Court of Admiralty, if it appears to him expedient that any sale decreed or ordered to be made of the vessel or property to which the cause relates should be conducted in the High Court of Admiralty, instead of in the county court from which the appeal is brought, may direct the transfer of the proceedings for sale, with or without the transfer of the subsequent proceedings in the cause, to the High Court of Admiralty, which court shall have jurisdiction and all powers and authorities relating thereto accordingly.

[COUNTY COURT ACT, 1875, 38 & 39 VICT. c. 50.]

Appeal by motion without special case.

**6.** In any cause, suit, or proceeding other than a proceeding in bankruptcy, tried or heard in any county court and in which any person aggrieved has a right of appeal, it shall be lawful for any person aggrieved by the ruling, order, direction, or decision of the judge, at any time within eight days after the same shall have been made or given, to appeal against such ruling, order, direction, or decision by motion to the court to which such appeal lies, instead of by special case, such motion to be ex parte in the first instance, and to be granted on such terms as to costs, security or stay of proceedings as to the court to which such motion shall be made shall seem fit. And if the court to which such appeal lies be not then sitting, such motion may be made before any judge of a superior court sitting in chambers. And at the trial or hearing of any such cause, suit, or proceeding, the judge, at the request of either party, shall make a note of any question of law raised at such trial or hearing, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision of the cause, suit, or proceeding, and he shall at the expense of any person or persons, being party or parties in any such cause, suit, or proceeding, requiring the same for the purpose of appeal, furnish a copy of such note, or allow a copy to be taken of the same by or on behalf of such person or persons, and he shall sign such copy, and the copy so signed shall be used and received on such motion and at the hearing of such appeal.

This section does not displace the appeal by special case, but only provides an alternative mode of appeal.

The section applies to cases where the party may appeal by leave only (*Turner* v. *Great Western Railway Co.*, 2 Q. B. D. 125); but it is limited in its application to those matters in which appeals previously existed, so that there is no power to move against the

decision of a judge on the ground of its being against the weight of evidence. (*Cousins* v. *Lombard Deposit Bank*, 1 Ex. D. 404.)

The county court judge cannot, by allowing his judgment to be post-dated, extend the time beyond the eight days (*Wilberforce* v. *Sowton*, 48 L. J., C. P. 28), nor can the High Court extend the time. (*Tennant* v. *Rawlings*, 4 C. P. D. 133; not followed in *Mason* v. *Wirral Highway Board*, 4 Q. B. D. 459, where delay arose from the judge not producing his notes.) The appeal must be entered in the list before the day mentioned in the notice to show cause. (*Donovan* v. *Brown*, 4 Ex. D. 148.)

The judge at chambers has no jurisdiction if the court is sitting (*Brown* v. *Shaw*, 1 Ex. D. 425); but when he has jurisdiction by reason of the court not sitting, he cannot adjourn the motion into court, but must hear and determine it himself. (*Bulton* v. *Woolwich Building Society*, 5 Q. B. D. 88.)

By Rule of Court of January 22nd, 1877, *ante*, p. 468, no motion may be made under this section "unless a copy of the judge's notes, signed by the judge, shall have been handed to the proper officer in court, *unless otherwise ordered*." The judge's notes were dispensed with in *Morgan* v. *Davies* (3 C. P. D. 260), and the Court of Appeal held in *Seymour* v. *Coulson* (5 Q. B. D. 359; 49 L. J., Q. B. 604), reversing decision below, and apparently overruling *Rhodes* v. *Liverpool Commercial Investment Co.* (4 C. P. D. 425), and *Pierpoint* v. *Cartwright* (5 C. P. D. 139)—that it is not a condition precedent to the right of appeal, that the appealing party should have asked the judge to take a note. In this case the judge's note had been furnished to the party after the hearing, and was produced to the court. In *Morgan* v. *Rees* (6 Q. B. D. 89), the court refused to order the judge to sign notes which he took at the trial upon a general request of the party appealing, and declined to sign on the ground that he had not been requested to take notes on any specific point of law; and this decision was affirmed by the Court of Appeal (see Weekly Notes, Feb. 19, 1881).

# VIII.

## WINTER AND SPRING ASSIZES ACTS.

[39 & 40 VICT. c. 57.]

*An Act to amend the Law respecting the holding of Winter Assizes.* [11th August, 1876.]

WHEREAS it is usual to hold winter assizes in some counties, and not to hold them in other counties in which there are but few prisoners awaiting trial, and it is expedient to provide for the more speedy trial of such last-mentioned prisoners: Be it therefore enacted as follows:

Short title.

**1.** This act may be cited as the Winter Assizes Act, 1876.

Power by order in council to unite counties for purpose of winter assizes.

**2.** Where it appears to her Majesty that by reason of the small number of prisoners or otherwise it is usually inexpedient to hold separate winter assizes for any county, it shall be lawful for her Majesty by order in council from time to time to provide in such manner and subject to such regulations as to her Majesty may seem meet for all or any of the following matters:

(1.) For uniting such county for the purpose of winter assizes to any neighbouring county or counties; and

(2.) For the appointment of the place or places at which winter assizes are to be held for such united counties, with power to direct that they shall be held at different places in different years; and

(3.) For the jurisdiction of the court and the attendance, jurisdiction, authority, and duty of sheriffs, gaolers, officers, jurors, and persons, the use of any prison, the removal of prisoners, the alteration of any commissions, writs, precepts, indictments, recognizances, proceedings, and documents, the transmission of recognizances, inquisitions, and documents, and the expenses of prosecutors and witnesses, and of maintaining and removing prisoners, so far as may seem to her Majesty necessary for carrying into effect an order in council under this act; and

(4.) For any matters which appear to her Majesty to be necessary or proper for carrying into effect an order in council under this act.

An order in council purporting to be made in pursuance of this act shall be deemed to be within the powers of this act, and shall while it is in force have effect as if it were enacted in this act, and for all the purposes of the holding of the winter assizes the counties united by the order shall, subject to the provisions of the order, be deemed to be one county, and the winter assizes held in and for such united county shall be deemed also to be held in and for each of the constituent counties.

Provision as to order in council.

3. Her Majesty may from time to time by order in council revoke, alter, or add to any order made in pursuance of this act.

Every order in council made in pursuance of this act shall be published in the London Gazette and laid before both houses of parliament within one month after it is made, if parliament is then sitting, and if not, within one month after the then next meeting of parliament.

Application of existing acts as to alteration of circuits.

4. All enactments relating to the power of her Majesty to alter the circuits of the judges, or places at which assizes are holden, or otherwise relating to assizes and circuits, shall apply and may be put in force for the purpose of carrying into effect this act or any order made thereunder.

Provision for neighbouring counties to Central Criminal Court district.

5. It shall be lawful for her Majesty from time to time by order in council to direct that, subject to any exceptions contained in the order, the jurisdiction of the justices and judges of the Central Criminal Court at any session of oyer and terminer and gaol delivery held for the Central Criminal Court district in the months of November, December, or January shall extend to any neighbouring county or part of a county mentioned in the order as if such county or part of a county were included within the limits of the Central Criminal Court district, and to apply, with such modifications and exceptions (if any) as to her Majesty may seem fit, the Central Criminal Court Act to the said county or part of a county and offences committed therein as if the same were a county or part of a county mentioned in that act.

An order in council purporting to be made in pursuance of this section shall be deemed to be within the powers of this act, and shall, while it is in force, have effect as if it were enacted in this act.

Definitions.

6. In this act—

The expression "winter assizes" means any court of assize or any session of oyer and terminer or gaol delivery held in the month of November, the month of December, or the month of January.

The expression "Central Criminal Court district" means the district within the limits of the act of the session of the fourth and fifth years of the reign of King William the Fourth, chapter thirty-six, intituled "An Act for establishing a new court for the trial of offences committed in the metropolis and parts adjoining;" and the expression "Central Criminal Court Act" means the last-mentioned act.

The expression "county" in this act shall include any county of a city or county of a town, and any such division of any county as is constituted by order in council under the act passed in the third and fourth years of King William the Fourth, chapter seventy-one, and intituled "An Act for the appointment of convenient places for the holding of Assizes in England and Wales."

[40 & 41 VICT. c. 46.]

*An Act to extend the provisions of the Winter Assizes Act, 1876.* [10th August, 1877.]

BE IT ENACTED AS FOLLOWS:

Amendment of 39 & 40 Vict. c. 57.

1. The Winter Assizes Act, 1876, shall take effect as if, wherever in that act the month of November is mentioned, there were added the months of September and October.

Short title.

2. This act may be cited as the Winter Assizes Act, 1877; and the Winter Assizes Act, 1876, and this act may be cited together as the Winter Assizes Acts, 1876 and 1877.

[42 VICT. c. 1.]

*An Act to amend the Law respecting the holding of Assizes.* [14th March, 1879.]

Short title.

1. This act may be cited as the Spring Assizes Act, 1879.

Extension to spring assizes of power of her Majesty as to winter assizes.

39 & 40 Vict. c. 57.

2. Whereas it is expedient to enable her Majesty to unite counties for the purpose of holding spring assizes in the manner in which her Majesty is authorized to unite counties for the purpose of holding winter assizes, and to make similar provision in relation to the jurisdiction of the Central Criminal Court over offences committed in the neighbouring counties to that which her Majesty is able to make under the Winter Assizes Act, 1876: Be it therefore enacted as follows:

All the provisions of the Winter Assizes Act, 1876, shall be deemed to be herein enacted, with the substitution of "spring assizes" for "winter assizes," and of the months of March, April, and May for the months of November, December, and January respectively; provided that nothing in this Act, or the Winter Assizes Acts, 1876 and 1877, shall affect the custom of holding separate assizes in and for each county twice a year.

40 & 41 Vict. c. 46.

Execution of sentence of death.

40 & 41 Vict. c. 21.

3. Notwithstanding anything in the Prison Act, 1877, or anything done in pursuance of that act, where judgment of death has been passed upon a convict at any assizes held after the passing of this act, the judgment may be carried into execution in any prison in which the convict was confined for the purpose of safe custody prior to his removal to the place where the assizes were held, and the sheriff of the county for which such assizes were held shall be charged with the execution of that judgment, and shall for that purpose have the same jurisdiction and powers, and be subject to the same duties in the prison in which the judgment is to be carried into execution, although such prison is not situate within his county, as he has by law with respect to the common gaol of his county, or would have had if the Prison Act, 1865, and the Prison Act, 1877, had not passed.

28 & 29 Vict. c. 126.

40 & 41 Vict. c. 21.

The coroner, whose duty it is to hold an inquest on the bodies of prisoners dying in any prison shall hold an inquest in accordance

with the Capital Punishment Amendment Act, 1868, on the body of any convict executed in that prison. 31 & 32 Vict. c. 24.

Nothing in this section shall affect any power authorized to be exercised by order in council under the Winter Assizes Act, 1876, and this act. 39 & 40 Vict. c. 57.

4. In this act— Definitions.

The expression "assizes" means any court of assize or any sessions of oyer and terminer or gaol delivery;

The expression "county" includes a county of a city and a county of a town, and any such division of a county as is constituted by order in council under the act of the session of the third and fourth years of King William the Fourth, chapter seventy-one, intituled "An Act for the appointment of convenient places for the holding of assizes in England and Wales," and the sheriff for a county so divided shall for the purposes of this act be deemed to be the sheriff for such division of a county.

# IX.

## Subject-Matters of Statutes and Rules regulating Proceedings in Matrimonial, Admiralty and Probate Causes.

### Matrimonial (*a*).

[20 & 21 Vict. c. 85.]

An Act to amend the Law relating to Divorce and Matrimonial Causes in England. [28*th August*, 1857.]

The Court for Divorce and Matrimonial Causes, now consolidated in the High Court of Judicature, was constituted by this act, and the general course of procedure provided. By sect. 8 the court consisted of eight judges, being the Lord Chancellor, the three chiefs and senior puisne judges of the common law courts, and the judge of the Court of Probate—of whom three formed a full court, with power to dissolve a marriage, &c.

[21 & 22 Vict. c. 93.]

An Act to enable Persons to establish Legitimacy, and the Validity of Marriages, and the Right to be deemed Natural-born Subjects. [2*nd August*, 1858.]

By this act any natural-born subject may apply to the court for a decree declaring that the petitioner is the legitimate child of his parents, and that the marriage of his father and mother, or of his grandfather and grandmother, was a valid marriage.

[21 & 22 Vict. c. 108.]

An Act to amend the Act of the twentieth and twenty-first Victoria, chapter eight-five. [2*nd August*, 1858.]

Among other matters the judge was by this act empowered to sit in chambers.

[22 & 23 Vict. c. 61.]

An Act to make further Provision concerning the Court for Divorce and Matrimonial Causes. [13*th August*, 1859.]

By this act all the judges of the common law courts were made judges of the Divorce Court.

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(*a*) The practice in matrimonial causes is excepted from the operation of the Rules of the Supreme Court. See Ord. LXII., p. 272, *ante*.

[23 & 24 VICT. c. 144.]

An Act to amend the Procedure and Powers of the Court for Divorce and Matrimonial Causes. [28*th August*, 1860.]

By this act (which was temporary only) the judge ordinary was empowered to exercise the jurisdiction of the full court.

[25 & 26 VICT. c. 81.]

An Act to amend the Procedure and Powers of the Court for Divorce and Matrimonial Causes. [7*th August*, 1862.]

By this act the above act, 23 & 24 Vict. c. 144, was made perpetual.

[27 & 28 VICT. c. 44.]

An Act to amend the Act relating to Divorce and Matrimonial Causes in England, twentieth and twenty-first Victoria, chapter eighty-five. [14*th July*, 1864.]

This act relates to "protection orders."

[29 & 30 VICT. c. 32.]

An Act further to amend the Procedure and Powers of the Court for Divorce and Matrimonial Causes. [11*th June*, 1866.]

By this act the court may order monthly or weekly payments to a wife; and a decree for a divorce is not to be made absolute for six months.

[31 & 32 VICT. c. 77.]

An Act to amend the Law relating to Appeals from the Court of Divorce and Matrimonial Causes in England. [31*st July*, 1868.]

By this act (repealing the prior enactments *in pari materiâ*) either party is allowed to appeal to the House of Lords within one month after a decree for the dissolution of marriage.

[36 VICT. c. 31.]

An Act to extend to Suits for Nullity of Marriage the Law with respect to the Intervention of Her Majesty's Proctor and others in Suits in England for dissolving Marriages. [16*th June*, 1873.]

[41 VICT. c. 19.]

An Act to extend the Matrimonial Causes Acts. [27*th May*, 1878.]

By this act the court may make orders as to costs of intervention by the Queen's Proctor or other person, and may revise marriage settlements, although there be no children of the marriage; and the court or magistrate before whom a husband is convicted of an aggravated assault may order that the wife be not bound to cohabit.

Rules and Regulations for the Court for Divorce and Matrimonial Causes.

[See Weekly Notes, October 16th, 1880, p. 475.]

*Admiralty. Probate.*

## ADMIRALTY (*b*).

[3 & 4 VICT. c. 65.]

An Act to improve the Practice and extend the Jurisdiction of the High Court of Admiralty of England. [*7th August*, 1840.]

By this act the jurisdiction of the court was enlarged so as to enable it to take cognizance of claims for seamen's wages under special contract, &c.

Rules, Orders and Regulations for the High Court of Admiralty in England. [*29th November*, 1859.]

[To be found in Williams & Bruce's Admiralty Digest, p. xxvii.]

[24 & 25 VICT. c. 10.]

An Act to extend the Jurisdiction and improve the Practice of the High Court of Admiralty. [*17th May*, 1861.]

By this act the jurisdiction of the court was extended in respect of claims for building ships, for necessaries, for damage to cargo imported, and other matters.

[27 & 28 VICT. c. 25.]

An Act for regulating Naval Prize of War. [*23rd June*, 1864.]

See the Statutes and Rules in Williams & Bruce's Admiralty Practice (A.D. 1868).

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## PROBATE (*b*).

[20 & 21 VICT. c. 77.]

An Act to amend the Law relating to Probates and Letters of Administration in England. [*25th August*, 1857.]

By this act the Court of Probate was constituted of one judge, to act also as judge of the Court of Admiralty, with power, by sect. 34, to call in any judge or judges of the common law courts, and subject, by sect. 39, to an appeal to the House of Lords. By sect. 35 the judge may direct an issue to be tried at the assizes.

[21 & 22 VICT. c. 95.]

An Act to amend the Act of the twentieth and twenty-first Victoria, chapter seventy-seven. [*2nd August*, 1858.]

By this act the judge of the Court of Probate was empowered to sit in chambers.

Rules and Orders for her Majesty's Court of Probate made under the provisions of the statutes 20 & 21 Vict. c. 77, and 21 & 22 Vict. c. 95, in respect of Contentious Business. [*30th July*, 1862.]

[To be found in 31 Law Journal Reports (New Series), Probate, 9.]

Amended and Additional Rules and Orders for Her Majesty's Court of Probate in Contentious Business. [*29th December*, 1865.]

[To be found in 31 Law Journal Reports (New Series), Probate, 25.]

See Coote & Tristram's Probate Practice; Browne's Probate Practice.

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(*b*) The practice of the Courts of Probate and Admiralty are still in force, except so far as expressly varied by the Rules of Court (sect. 18 of Act of 1875).

# X.

## Statutes and Rules relating to Revenue Proceedings.

(By sect. 34 of the Act of 1873, p. 34, revenue proceedings were assigned to the Exchequer Division, but by Order in Council under sect. 32 of the Act of 1873, *ante*, p. 32, they are assigned to the Queen's Bench Division. By Ord. LXII. nothing in the Rules of Court (except as in Rule 2 of that Order excepted) is to affect the practice on the revenue side of the Exchequer Division.)

[18 & 19 Vict. c. 90.]

An Act for the Payment of Costs in Proceedings instituted on behalf of the Crown in matters relating to the Revenue, and for the Amendment of the Procedure and Practice in Crown Suits in the Court of Exchequer. [14*th August*, 1855.]

By this act the rule that the Crown does not take or pay costs is abrogated so far as matters of revenue are concerned, and power was given to the barons of the Exchequer to make rules for the regulation of pleading and practice.

[22 & 23 Vict. c. 21.]

An Act to regulate the Office of Queen's Remembrancer, and to amend the Practice and Procedure on the Revenue Side of the Court of Exchequer. [13*th August*, 1859.]

The Queen's Remembrancer is referred to in the 77th sect. of the Judicature Act, 1873, and he is liable to perform the same or analogous duties as an officer of the Supreme Court. By this act a bill of exceptions may be tendered in a revenue cause, and as Ord. LVIII., Rule 1, does not apply to revenue causes, the process is to this extent still existing.

[28 & 29 Vict. c. 104.]

An Act to amend the Procedure and Practice in Crown Suits in the Court of Exchequer at Westminster; and for other purposes. [5*th July*, 1865.]

This is the main act regulating the procedure in revenue causes. The procedure is more like that formerly in use in the Court of Chancery than that of the High Court.

Regulæ Generales, 24 Vict. (1860).

[To be found in 6 Hurlstone & Norman's Reports, 1.]

Regulæ Generales, 25 Vict. (1861).

[To be found in 7 Hurlstone & Norman's Reports, 505.]

General Rules as to the Payment of Fees by Stamps (1865).

[To be found in 35 Law Journal Reports, Common Law, 23.]

Regulæ Generales, Easter Term, 1866, for regulating the Procedure and Practice in Suits by English information. With Schedule of Solicitors' Fees.

[To be found in the Law Reports, 1 Ex. 389, and in the 35 Law Journal Reports, Common Law, 1.]

# XI.

## Statutes, Rules and Regulations relating to the Business in the Chambers of the Chancery Division.

[15 & 16 Vict. c. 80.]

An Act to abolish the Office of Master in Ordinary of the High Court of Chancery, and to make provision for the more speedy and efficient dispatch of business in the said Court.

[30*th June*, 1852.]

This act empowers the Chancery judges to sit in chambers and dispose of business of a formal and discretionary kind, relating to pleadings in actions, the management of property, &c. The mode of proceeding is to be by summons, as at common law. Powers are also given to the respective judges to delegate this jurisdiction to their chief clerks, who make certificates to the judge. General powers are also conferred on the Lord Chancellor, with the Master of the Rolls and Vice-Chancellors, to make rules for regulating the conduct of business at chambers. The judge at chambers also receives the opinion of conveyancing counsel, who, six in number, are appointed under this act. The assistance of accountants, merchants, engineers, actuaries and other scientific persons, may also be obtained. By Ord. LX., Rule 1 (p. 264), the officers of the Court of Chancery are attached to the Chancery Division of the Court, but no rules are provided for the regulation of business in the chambers of the Chancery Division.

Ord. XXXV. of Consolidated Orders of the Court of Chancery.

[15*th February*, 1860.]

[To be found in 29 Law Journal Reports (New Series), Equity, 31.]

This order extends the business to be conducted in chambers, and further regulates the procedure of the business, whether originating in chambers or not.

Regulations to be observed in the conduct of business at the chambers of the Master of the Rolls and the Vice-Chancellors, by order of the Right Hon. Sir John Romilly, Master of the Rolls; the Honorable the Vice-Chancellor Sir Richard Torin Kindersley; the Honorable the Vice-Chancellor Sir John Stuart, and the Honorable the Vice-Chancellor Sir William Page Wood, this 8th day of August, 1857.

[To be found in 27 Law Journal Reports (New Series), Chancery, 15.]

These regulations indicate the most convenient way for taking proceedings, but are not absolutely obligatory. They consist mainly of forms of affidavits and of accounts. By Ch. C. O., I., Rule 34, the chief clerks of the judges are required to meet and consider the rules for the transaction of business at chambers, and their recommendations may be adopted.

# XII.

## Titles of Winding-up Acts and Rules.

[25 & 26 Vict. c. 89.]

An Act for the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations.

[*7th August*, 1862.]

The winding-up sections are from 74—173. By sect. 10 of the Judicature Act, 1875, the rules in bankruptcy in reference to secured creditors are to apply to the winding-up of companies; and by Ord. LVIII., Rules 9 and 15, the time for appealing from a winding-up order is twenty-one days.

[30 & 31 Vict. c. 131.]

An Act to amend the Companies Act, 1862.

[*20th August*, 1867.]

General Order and Rules of the High Court of Chancery, 11th November, 1862, to regulate the mode of proceeding under the Companies Act, 1862.

[To be found in 32 Law Journal Reports (New Series), Equity, 1.]

General Order and Rules of the High Court of Chancery to regulate the mode of Proceeding under the Companies Act, 1867.

[*21st March*, 1868.]

[To be found in 37 Law Journal Reports (New Series), Equity, 10.] This order was amended by an order made on the 2nd of March, 1869, to be found in 38 Law Journal Reports (New Series), Equity, 3.]

[33 & 34 Vict. c. 61.]

An Act to amend the Law relating to Life Assurance Companies.

[*9th August*, 1870.]

Sections 21 and 22 deal with winding-up.

[35 & 36 Vict. c. 41.]

An Act to amend the Life Assurance Companies Acts, 1870 & 1871.

[*6th August*, 1872.]

# XIII.

## Statutory Jurisdiction of Chancery Division.

[See Sect. 34 of the Act of 1873, p. 33.]

Act for the Production of *Cestui que vie* (6 Anne, c. 18).

By this act a person claiming an estate in remainder may move the court to cause the tenant for life to be produced.

Legacy Duty Act (36 Geo. 3, c. 52).

By this act (s. 32) if by infancy or absence a legacy cannot be paid, the money may be paid into the Bank of England to be applied for the benefit of the party entitled, after deduction of the duty.

Land Tax Redemption Act (42 Geo. 3, c. 116).

By this act (s. 67), timber may be cut down with the approbation of the court, and the produce applied in the redemption of the land tax.

Property Law Amendment Act (11 Geo. 4 & 1 Will. 4, c. 65).

By this act (ss. 16—18), an infant may grant a lease under the direction of the court.

Investment on Real Securities in Ireland Act (4 & 5 Will. 4, c. 29).

By this act investments in real estate in Ireland, on account of minors, are made under the direction of the court.

Custody of Infants Acts (3 & 4 Vict. c. 90; 36 Vict. c. 12).

By the former act, the court may assign the care of an infant convicted of felony to a person other than the testamentary or natural guardian: and by the latter, the court may order that an infant under the age of sixteen, being in the custody of the father, may be delivered to the custody of the mother, upon her petition.

The Copyhold Acts (4 & 5 Vict. c. 35; 6 & 7 Vict. c. 23; 15 & 16 Vict. c. 51; 21 & 22 Vict. c. 94).

See 21 & 22 Vict. c. 94, s. 43.

Ecclesiastical Estates Acts (5 & 6 Vict. c. 26; 14 & 15 Vict. c. 104).

By these acts parties under disability may sell land to the ecclesiastical commissioners under the superintendence of the court.

Perpetuation of Testimony Act (5 & 6 Vict. c. 69).

By this act proceedings may be taken by persons claiming titles or estates upon the happening of future events, to perpetuate testimony material for establishing their claims.

*Statutory Jurisdiction of Chancery Division.*

The Defence Acts (5 & 6 Vict. c. 94; 18 & 19 Vict. c. 117; 22 & 23 Vict. c. 21; 23 & 24 Vict. c. 112; 27 & 28 Vict. c. 39).

By these acts parties under disability may sell lands to the Board of Ordnance, under the superintendence of the court.

Solicitors Act (6 & 7 Vict. c. 73).

By this act (s. 39), the court may order the taxation of bills of costs chargeable on trustees or executors.

Lands Clauses Consolidation Act, 1845 (8 Vict. c. 18).

By this act (ss. 69—87), the purchase-money of lands taken by incorporated companies from parties under disability is applied by the court for their benefit.

Drainage and Improvement of Land Acts (8 & 9 Vict. c. 56; 10 & 11 Vict. cc. 11, 38; 11 & 12 Vict. c. 119; 13 & 14 Vict. c. 31; 19 & 20 Vict. c. 9; 27 & 28 Vict. c. 114; 33 & 34 Vict. c. 56).

By these acts the court may empower tenants for life, &c. to charge land with money laid out in improvements.

Parliamentary Deposits Act (9 Vict. c. 20).

By this act the court directs, in certain events, the repayment to the parties entitled of the monies required by the standing orders of the houses of parliament to be deposited in court by the promoters of a bill.

Trustee Relief Acts (10 & 11 Vict. c. 96; 12 & 13 Vict. c. 74; 22 & 23 Vict. c. 35).

Proceedings under the Trustee Relief Act, 10 & 11 Vict. c. 96 (Ch. C. O. XLI., No. 1).

[To be found in 29 Law Journal Reports (New Series), Equity, 42.]

By these acts the majority of a body of trustees and executors may pay trust funds into the Bank of England to attend the orders of the court, and the court may distribute the funds amongst the proper parties on petition, or direct an action to be brought if necessary.

Trustee Acts (13 & 14 Vict. c. 60; 15 & 16 Vict. c. 55).

These acts are for the benefit of cestuis que trustent, and provide for the appointment of new trustees by the court in cases where trustees are under disability, &c.

Charitable Trusts Acts (16 & 17 Vict. c. 137; 18 & 19 Vict. c. 124; 32 & 33 Vict. c. 110; 52 Geo. 3, c. 101).

Proceedings under the Statute 16 & 17 Vict. c. 137, relating to Charitable Trusts (Ch. C. O. XLI., No. 2).

[To be found in 29 Law Journal Reports (New Series), Equity, 42.]

The Merchant Shipping Act (17 & 18 Vict. c. 104).

By this act (s. 514), the court has jurisdiction to determine the liability of shipowners for damage, and to apportion the compensation money payable by them.

Infants' Settlement Act (18 & 19 Vict. c. 43).

By this act any male infant not under 20, or any female infant not under 17 years of age, may make a binding marriage settlement with the sanction of the court upon petition by the infant or guardian.

*Statutory Jurisdiction of Chancery Division.*

Confirmation of Sales Act (25 & 26 Vict. c. 108).

By this act trustees may sell minerals without land, or land without minerals, under the direction of the court.

Transfer of Land Acts (25 & 26 Vict. c. 53; 38 & 39 Vict. c. 87).

By the latter of these acts provision is made for the registration of titles to real estate, and for the intervention of the court when doubtful questions arise.

Declaration of Title Act (25 & 26 Vict. c. 67).

By this act any party entitled to registration with indefeasible title may apply to the court for a declaration of that title.

Judgment Act, 1864 (27 & 28 Vict. c. 112).

By this act (s. 4), a creditor to whom land has been delivered in execution, may, upon registering the execution, obtain from the court a decree for sale.

The Mortgage Debenture Acts (28 & 29 Vict. c. 78; 33 & 34 Vict. c. 20).

By the former of these acts (ss. 42, 47), the court may appoint a receiver in default of payment of dividends on debentures authorized by the act to be raised by any company incorporated under the Joint Stock Companies Acts.

The Railway Companies Act, 1867 (30 & 31 Vict. c. 127).

By this act railway companies, unable to meet their engagements with their creditors, may file a "scheme of arrangement," with the assent of certain proportions of their creditors, which scheme, when confirmed by the court, has the same effect as if enacted by parliament.

Order of the High Court of Chancery under the Railway Companies Act, 1867. (24th January, 1868.)

[To be found in 37 Law Journal Reports (New Series), Equity, 1.]

Metropolitan Board of Works Loans Act (32 & 33 Vict. c. 102).

By this act (s. 40), the court may appoint a receiver in default of payment of dividend on "Metropolitan Consolidated Stock."

The National Debt Act, 1870 (33 & 34 Vict. c. 71).

This act (ss. 55—60) provides for the re-transfer, to parties showing title, of stock transferred to the National Debt Commissioners in consequence of the dividends thereon remaining unclaimed for 10 years, and for the settlement by the court of contested claims to such stock and dividends.

The Married Women's Property Act (33 & 34 Vict. c. 93).

By this act (s. 9), applications to settle the respective rights of husband and wife to property may be made to the court or a county court judge (irrespective of the amount of the property in dispute).

General Order as to Petitions (Ch. C. O. XXXIV., 29 Law Journal Reports, New Series, 31).

Settled Estates Act, 1877 (40 & 41 Vict. c. 18).

By this act, which consolidates five prior acts in pari materiâ from 1856 to 1876, with amendments mostly verbal, the Chancery Division, with the concurrence of, or saving the rights of parties interested, authorizes leases or sales of settled estates.

# COLLECTION OF RULES OF THE SUPREME COURT,

## ISSUED SINCE THE COMMENCEMENT OF THE JUDICATURE ACTS.

[These Rules have been already printed in their proper places amongst the "Rules of the Supreme Court," p. 122 *et seq.*, *ante*. There are eleven sets of them, bearing date respectively December, 1875, February, 1876, June, 1876, December, 1876, May, 1877, June, 1877, November, 1878, March, 1879, December, 1879, April, 1880, and May, 1880. The first three sets were made by 22, 25, and 26 judges respectively under sect. 17 of the Act of 1875, p. 77, *ante*. The other sets were made by a committee of 9 judges under sect. 17 of the Act of 1876, p. 77, *ante*. In more than one case the marginal numbering seems to be not quite exact.]

### Rules of the Supreme Court, December, 1875.

*At a meeting of the judges of the Supreme Court, held on the 1st of December, 1875, in pursuance of the Judicature Act, 1875, the following new rules of court and alterations of existing rules of court were unanimously agreed to:—*

1. The rules in the first schedule to the Supreme Court of Judicature Act, 1875, may be cited as "The Rules of the Supreme Court," and the additional rules of court made by order in council * on the 12th day of August, 1875, may be cited as "The Rules of the Supreme Court (Costs)," and these rules may be cited as "The Rules of the Supreme Court, December, 1875," or each separate one of these rules may be cited as if it had been one of "The Rules of the Supreme Court," and had been numbered by the number of the order and rule mentioned in the margin.

* Page 407.

2. Form A. in the Appendix to these rules shall be substituted for the form referred to in Order II., Rule 7, of "The Rules of the Supreme Court." Ord. II., Rule 7a.

[3. *The first paragraph of Rule* 11 *of Order V. of "The Rules of the Supreme Court," is hereby annulled, and the following shall stand in lieu thereof:* Ord. V., Rule 11.

"*In admiralty actions* in rem *a warrant for the arrest of property, according to the Form B. in the Appendix to these rules, may be issued at the instance either of the plaintiff or of the defendant at any time after the writ of summons has issued, but no warrant of arrest shall be issued except from the principal registry in London, and until an affidavit by the party or his agent has been filed, and the following provisions complied with.*" Annulled, with Form (B.), *post*, by R. S. C., Dec. 1875, Rule 4.]

*R. S. C., Dec.* 1875.

4. Order V., Rule 12, of "The Rules of the Supreme Court," is hereby annulled.

5. Order IX., Rule 9, of "The Rules of the Supreme Court," is hereby annulled, and the following shall stand in lieu thereof:

Ord. V., Rule 12.

Ord. IX., Rule 9.

"In admiralty actions *in rem* the warrant of arrest shall be served by the marshal or his substitutes, whether the property to be arrested be situate within the port of London or elsewhere within the jurisdiction of the court, and the solicitor issuing the warrant shall, within six days from the service thereof, file the same in the registry."

Ord. IX., Rule 10.

6. Order IX., Rule 10, of "The Rules of the Supreme Court," is hereby annulled, and the following shall stand in lieu thereof:

"In admiralty actions *in rem*, service of a writ of summons against ship, freight, or cargo on board, is to be effected by nailing or affixing the original writ for a short time on the mainmast, or on the single mast of the vessel, and on taking off the process, leaving a true copy of it nailed or fixed in its place."

Ord. XIII., Rule 5a.

7. Where a defendant fails to appear to a writ of summons issued out of a district registry, and the defendant had the option of entering an appearance either in the district registry or in the London office, judgment for want of appearance shall not be entered by the plaintiff until after such time as a letter posted in London on the previous evening, in due time for delivery to him on the following morning, ought, in due course of post, to have reached him.

Ord. XIII., Rule 10.

8. Order XIII., Rule 10, of "The Rules of the Supreme Court," is hereby annulled.

Ord. XXIII., Rule 2.

9. When a cause has been entered for trial, it may be withdrawn by either plaintiff or defendant, upon producing to the proper officer a consent in writing, signed by the parties.

Ord. XXXV., Rule 11a.

10. In an admiralty action *in rem*, any person who may have duly intervened and appeared may remove an action from a district registry as of right.

Ord. XXXV., Rule 15.

11. Every district registrar shall account for and pay over to the Treasury all moneys paid into court at the registry of which he is registrar, in such manner and at such times as may be from time to time directed by the Treasury.

Ord. XXXVI., Rule 8.

12. Order XXXVI., Rule 8, of "The Rules of the Supreme Court," shall be read as if the words "to be" had been inserted before the words "entered for trial."

Ord. XXXVI., Rule 10a.

13. Unless within six days after notice of trial is given, the cause shall be entered for trial by one party or the other, the notice of trial shall be no longer in force. This rule is not to apply in any case in which notice of trial has been already given or to trials not in London or Middlesex.

Ord. XXXVI., Rule 17.

14. The first sentence of Order XXXVI., Rule 17, shall be altered as follows:—The party entering the action for trial shall deliver to the officer two copies of the whole of the pleadings in the action, one of which shall be for the use of the judge.

In the second sentence the word "copies" shall be substituted for "copy."

Ord. LXI., Rule 4a.

15. The offices of each district registrar of the High Court of Justice shall be open on every day and hour in the year on which the offices of the registrar of the county court of the place in which the district registry is situate are required to be kept open.

Ord. LVIII., Rule 19.

[16. *In order to constitute divisional courts for the determination of*

*appeals from inferior courts under section 45 of the Judicature Act, 1873, each division of the High Court of Justice shall, before the 1st of January, 1876, select one of the judges of such division to act until the 1st of January, 1877, and so on before every 1st of January subsequent to the 1st of January, 1876, to act for the twelve months next ensuing.*

*Any two or more of the judges so selected shall constitute a divisional court for the purpose of the said section.*

*Any other judge of the High Court of Justice may, by arrangement between himself and any one of the judges so selected, act for such last-mentioned judge in any particular case or cases, or on any particular day or days.*

*The judges so selected shall make such arrangements as they shall think fit, as to the manner in which application may be made to them, or any of them, in court or chambers, under the 6th sect. of 38 & 39 Vict. c. 50, relative to appeals by motion under that act.* Annulled, R. S. C., Dec. 1876, Rule 11, *post.*]

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## Appendix.

(A.)

[See p. 284, *ante.*]

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(B.)

*Warrant of Arrest in Admiralty Action in rem.*

18 [*Here put the letter and number.*]

*In the High Court of Justice.*
*Admiralty Division.*

*Between A. B., plaintiff,*
*and*
*The owners of the*
*Victoria, &c.*

*To the marshal of the Admiralty Division of our High Court of Justice, and to all and singular his substitutes. We hereby command you to arrest the ship or vessel of the port of* [*and the cargo and freight, &c., as the case may be*], *and to keep the same under safe arrest, until you shall receive further orders from us. Witness, Hugh MacCalmont, Baron Cairns, Lord High Chancellor of Great Britain, this day of* 18 .

[Annulled. See note to Rule 3, *ante.*]

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## Rules of the Supreme Court, February, 1876.

*At a meeting of the Judges of the Supreme Court, held on the 23rd of February,* 1876, *in pursuance of the Judicature Act,* 1875, *the following new Rules of Court and alterations of existing Rules of Court were unanimously agreed to, and ordered to be in force on and after the 3rd day of March,* 1876 :—

1. These rules may be cited as "The Rules of the Supreme Court, February, 1876," or each separate one of these rules may

*R. S. C., Feb.* 1876.

be cited as if it had been one of "The Rules of the Supreme Court," and had been numbered by the number of the order and rule mentioned in the margin.

ORDER IV.—*Indorsement of Address.*

Ord. IV., Rule 2a.

2. Notwithstanding anything to the contrary contained in Order IV. of "The Rules of the Supreme Court," Rules 1 and 2 of such order shall only apply where the writ of summons is issued out of the London office.

Ord. IV., Rule 3a.

3. Order IV., Rule 3, is hereby annulled, and the following shall stand in lieu thereof:

"In all cases where a writ of summons is issued out of a district registry the solicitor shall give on the writ the address of the plaintiff, and his own name or firm and his place of business, which shall, if his place of business be within the district of the registry, be an address for service, and if such place be not within the district, he shall add an address for service within the district, and, where the defendant does not reside within the district, he shall add a further address for service, which shall not be more than three miles from Temple Bar; and where the solicitor issuing the writ is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor. Where the plaintiff sues in person, he shall give on the writ his place of residence and occupation, which shall, if his place of residence be within the district, be an address for service, and if such place be not within the district, he shall add an address for service within the district, and, where the defendant does not reside within the district, he shall add a further address for service, which shall not be more than three miles from Temple Bar."

ORDER V.—*Issue of Writs of Summons.*

Ord. V., Rule (11a).

4. Rule 3 of "The Rules of the Supreme Court, December, 1875," is hereby annulled, and the following rule substituted:—

The first paragraph of Rule 11 of Order V. of "The Rules of the Supreme Court" is hereby annulled, and the following shall stand in lieu thereof:

"In admiralty actions *in rem* a warrant for the arrest of property, according to the Form A. in the Appendix to these rules, may be issued at the instance either of the plaintiff or of the defendant at any time after the writ of summons has issued, but no warrant of arrest shall be issued until an affidavit by the party or his agent has been filed, and the following provisions complied with."

ORDER XII.—*Appearance.*

Ord. XII., Rule 6 (a).

5. Order XII., Rule 6, is hereby annulled, and the following shall stand in lieu thereof:

"A defendant shall enter his appearance to a writ of summons by delivering to the proper officer a memorandum in writing, dated on the day of delivering the same, and containing the name of the defendant's solicitor, or stating that the defendant defends in person.

"A defendant who appears elsewhere than where the writ is issued, shall on the same day give notice of his appearance to the plaintiff's solicitor or to the plaintiff himself if he sues in person, either by notice in writing served in the ordinary way at the

address for service within the district of the district registry, or by prepaid letter directed to such address, and posted on that day in due course of post." *R. S. C., Feb.* 1876.

Order XXVII.—*Amendment of Pleadings.*

6. The court or a judge may, at any stage of the proceedings, allow the plaintiff to amend the writ of summons in such manner, and on such terms, as may seem just. Ord. XXVII., Rule 11.

Order LV.—*Costs.*

7. In any cause or matter in which security for costs is required, the security shall be of such amount, and be given at such time or times, and in such manner and form as the court or a judge shall direct. Ord. LV.

Order LVII.—*Time.*

8. In admiralty actions the court or a judge shall have power at any stage of the proceedings in such action, upon a motion or summons by either party, calling upon the other party to show cause why the trial of such action should not take place on an early day to be appointed by the court or a judge, to appoint that such trial shall take place on any day or within any time which to the court or judge shall seem fit; and for such purpose the court or judge shall have power upon such motion or summons to dispense with the giving of notice of trial, or to abridge the time or times appointed by these rules for giving such notice, for the delivery of pleadings, or for doing any other act or taking any other proceeding in the action, upon such terms (if any) as the nature of the case may require. Ord. LVII. Rule 7.

Order LXI.—*Sittings and Vacations.*

9. The offices of the Supreme Court (including the judges' chambers) shall close on Saturdays at two o'clock. Ord. LXI., Rule 4 (a).

10. The official referees shall sit at least from 10 a.m. to 4 p.m. on every day during the Michaelmas, Hilary, Easter and Trinity sittings of the High Court of Justice, except on Saturdays, during such sittings, when they shall sit, at least, from 10 a.m. to 2 p.m.; but nothing in this rule shall prevent their sitting on any other days. Ord. LXI., Rule 4 (b).

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Appendix (A.).

[See p. 285.]

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Rules of the Supreme Court, June, 1876.

*At a meeting of the Judges of the Supreme Court, held on the 25th of June, 1876, in pursuance of the Judicature Act, 1875, the following new Rules of Court and alterations of existing Rules of Court were unanimously agreed to, and ordered to be in force on and after the 17th day of July, 1876.*

1. These rules may be cited as "The Rules of the Supreme Court, June, 1876," or each separate one of these rules may be cited as if it had been one of the Rules of the Supreme Court, and had been

*R. S. C., June*, 1876.

numbered by the number of the order and rule mentioned in the margin.

ORDER II.—*Writ of Summons and Procedure.*

Ord. II., Rule 3 (a).

2. Forms 2 and 3 in Part I. of Appendix A. to the Rules of the Supreme Court shall be read as if the words "by leave of the court or a judge" were not therein.

ORDER V.—*Issue of Writs of Summons.*

Ord. V., Rule 8.

3. The following words are hereby added to the end of Order V., Rule 8, of the Rules of the Supreme Court:—

"And when such action shall be commenced in a district registry, it shall be further distinguished by the name of such registry."

ORDER IX.—*Service of Writ of Summons.*

Ord. IX., Rule 6a.

4. Where one person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the firm name, the writ may be served at the principal place within the jurisdiction of the business so carried on upon any person having at the time of service the control or management of the business there; and, subject to any of the rules of the Supreme Court, such service shall be deemed good service on the person so sued.

ORDER XI.—*Service out of the Jurisdiction.*

Ord. XI., Rule 1a.

5. Whenever any action is brought in respect of any contract which is sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any such action, or for the breach whereof damages or other relief are or is demanded in such action, when such contract was made or entered into within the jurisdiction, or whenever there has been a breach within the jurisdiction of any contract wherever made, the judge, in exercising his discretion as to granting leave to serve such writ or notice on a defendant out of the jurisdiction, shall have regard to the amount or value of the property in dispute or sought to be recovered, and to the existence in the place of residence of the defendant, if resident in Scotland or Ireland, of a local court of limited jurisdiction, having jurisdiction in the matter in question, and to the comparative cost and convenience of proceeding in England or in the place of such defendant's residence, and in all the above-mentioned cases no such leave is to be granted without an affidavit stating the particulars necessary for enabling the judge to exercise his discretion in manner aforesaid, and all such other particulars (if any) as he may require to be shown.

ORDER XII.—*Appearance.*

Ord. XII., Rule 12a.

6. Where any person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the name of the firm, he shall appear in his own name; but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

ORDER XVI.—*Parties.*

Ord. XVI., Rule 9a.

7. In any case in which the right of an heir-at-law or the next of kin or a class shall depend upon the construction which the court may put upon an instrument, and it shall not be known or be difficult to ascertain who is or are such heir-at-law or next of kin or

class, and the court shall consider that in order to save expense or for some other reason it will be convenient to have the question or questions of construction determined before such heir-at-law, next of kin, or class shall have been ascertained by means of inquiry or otherwise, the court may appoint some one or more person or persons to represent such heir-at-law, next of kin, or class, and the judgment of the court in the presence of such person or persons shall be binding upon the party or parties or class so represented.

8. Any person carrying on business in the name of a firm apparently consisting of more than one person may be sued in the name of such firm. Ord. XVI., Rule 10a.

ORDER XIX.—*Pleading generally.*

9. In Order XIX., Rule 5, of the Rules of the Supreme Court, the word "ten" is hereby substituted for the word "three" before the word "folios." Ord. XIX., Rule 5a.

ORDER XXIII.—*Discontinuance.*

10. A defendant may sign judgment for the costs of an action if it is wholly discontinued, or for the costs occasioned by the matter withdrawn, if the action be not wholly discontinued. Ord. XXIII., Rule 2.

ORDER XXXI.—*Discovery and Inspection.*

11. In Order XXXI., Rule 7, of the Rules of the Supreme Court, the word "ten" is hereby substituted for the word "three" before the word "folios." Ord. XXXI., Rule 7a.

ORDER XXXV.—*Proceedings in District Registries.*

12. Order XXXV., Rule 1, of the Rules of the Supreme Court is hereby annulled, and the following shall stand in lieu thereof:— Ord. XXXV., Rule 1a.

1. Where an action proceeds in the district registry all proceedings, except where by any of the Rules of the Supreme Court it is otherwise provided, or the court or a judge shall otherwise order, shall be taken in the district registry down to and including final judgment; and every final judgment and every order for an account by reason of the default of the defendant or by consent shall be entered in the district registry in the proper book, in the same manner as a like judgment or order in an action proceeding in London would be entered in London.

Where the writ of summons is issued out of a district registry and the plaintiff is entitled to enter interlocutory judgment under Order XIII., Rule 6, or where the action proceeds in the district registry and the plaintiff is entitled to enter interlocutory judgment under Order XXIX., Rule 4 or 5, in either case such interlocutory judgment, and when damages shall have been assessed, final judgment shall be entered in the district registry, unless the court or judge shall otherwise order.

Where an action proceeds in the district registry, final judgment shall be entered in such registry, unless the judge at the trial or the court or a judge shall otherwise order.

Actions in the Queen's Bench, Common Pleas and Exchequer Divisions shall be entered for trial with the associates and not in the district registries.

*R. S. C.*, *June*, 1876.

ORDER XXXVI.—*Trial.*

Ord. XXXVI., Rule 4a.

13. The defendant, instead of giving notice of trial, may apply to the court or judge to dismiss the action for want of prosecution; and on the hearing of such application, the court or a judge may order the action to be dismissed accordingly, or may make such other order, and on such terms as to the court or judge may seem just.

Ord. XXXVI., Rule 29a.

14. The business to be referred to the official referees appointed under the Supreme Court of Judicature Act, 1873, shall be distributed among such official referees in rotation by the clerks to the registrars of the Supreme Court, Chancery Division, in like manner in all respects as the business referred to conveyancing counsel appointed under the Act of the 15th and 16th Vict. cap. 80, section 41, is directed to be distributed by the second of the Consolidated General Orders of the Court of Chancery.

Ord. XXXVI., Rule 29b.

15. When an order shall have been made referring any business to the official referee in rotation, such order, or a duplicate of it, shall be produced to the registrar's clerk, whose duty it is to make such distribution as aforesaid; and such clerk shall (except in the case provided for by Rule 29c of this order) endorse thereon a note specifying the name of the official referee in rotation to whom such business is to be referred; and the order so endorsed shall be a sufficient authority for the official referee to proceed with the business so referred.

Ord. XXXVI., Rule 29c.

16. The two last preceding rules of this order are not to interfere with the power of the court, or of the judge at chambers, to direct or transfer a reference to any one in particular of the said official referees, where it appears to the court or the judge to be expedient; but every such reference or transfer shall be recorded in the manner mentioned in Rule 2 of the second of the said Consolidated General Orders, and a note to that effect be endorsed on the order of reference or transfer; and in case any such reference or transfer shall have been or shall be made to any one in particular of the said referees, then the clerk in making the distribution of the business according to such rotation as aforesaid shall have regard to any such reference or transfer.

ORDER XLII.—*Execution.*

Ord. XLII., Rule 10.

17. Order XLII., Rule 10, of the Rules of the Supreme Court shall be read as if the words "or on behalf of" had been inserted after the words "signed by."

ORDER LI.—*Transfers and Consolidation.*

Ord. LI., Rule 2a.

18. When an order has been made by any judge of the Chancery Division for the winding-up of any company under the Companies Acts, 1862 and 1869, or for the administration of the assets of any testator or intestate, the judge in whose court such winding-up or administration shall be pending shall have power, without any further consent, to order the transfer to such judge of any action pending in any other division brought or continued by or against such company, or by or against the executors or administrators of the testator or intestate whose assets are being so administered, as the case may be.

ORDER LIV.—*Applications at Chambers.*

*R. S. C., Dec.* 1876.

19. The authority and jurisdiction of the district registrar or of a Master of the Queen's Bench, Common Pleas, or Exchequer Divisions shall not extend to granting leave for service out of the jurisdiction of a writ of summons or of notice of a writ of summons.

Ord. LIV., Rule 2a.

RULES OF THE SUPREME COURT (COSTS).

20. The Schedule to the Rules of the Supreme Court (Costs), is hereby altered in the following particulars:—

The allowance for printing a document not exceeding ten folios shall be 10*s.*, and, in addition for every twenty beyond the first twenty copies of any document not exceeding twenty-four folios, 2*s.*

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RULES OF THE SUPREME COURT, DECEMBER, 1876.

*I, the Right Honourable Hugh MacCalmont Baron Cairns, Lord High Chancellor of Great Britain, do hereby, in pursuance of the seventeenth section of the Appellate Jurisdiction Act,* 1876, *appoint Sir William Baliol Brett, Mr. Justice Lush, Mr. Baron Pollock, and Mr. Justice Manisty to be the four judges of the Supreme Court of Judicature, by whom, together with the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, Rules of Court shall be made as therein mentioned. And this appointment is to continue in force until the first day of January,* 1878.

*November 7th,* 1876. CAIRNS, C.

1. These rules may be cited as "The Rules of the Supreme Court, December, 1876," or each separate rule may be cited as if it had been one of the rules of the Supreme Court, and had been numbered by the number of the order and rule mentioned in the margin.

2. These rules shall come into operation on the 1st December, 1876.

ORDER XXXVI.—*Trial.*

3. Order XXXVI., Rule 22, is hereby repealed, and instead thereof the following rule shall take effect:— Ord XXXVI., Rule 22a.

Upon the trial of an action the judge may, at or after the trial, direct that judgment be entered for any or either party, or adjourn the case for further consideration, or leave any party to move for judgment. No judgment shall be entered after a trial without the order of a court or judge.

4. Where in any action in the Chancery Division the action or any question at issue in the action is ordered to be tried before any commissioner or commissioners of assize, or at the London or Middlesex sittings of any division other than the Chancery Division, the order directing such trial shall state on its face the reason for which it is expedient that the action, question, or issue should be so tried and should not be tried in the Chancery Division. Ord. XXXVI., Rule 29a.

ORDER XXXIX.—*New Trial.*

5. Order XXXIX., Rule 1, is hereby repealed, and instead thereof the following provision shall take effect:— Ord. XXXIX., Rule 1.

Rule 1. Where, in an action in the Queen's Bench, Common

*R. S. C., Dec.* 1876.

Pleas, or Exchequer Division, there has been a trial by a jury, any application for a new trial shall be to a divisional court. And where the trial has been by a judge without a jury, the application for a new trial shall be to the Court of Appeal.

Ord. XXXIX., Rule 1a.

6. Applications for new trials shall be by motion calling on the opposite party to show cause at the expiration of eight days from the date of the order, or so soon after as the case can be heard, why a new trial should not be directed. Such motion shall be made within the times following, unless the court or a judge shall enlarge the time:—

An application to a divisional court for a new trial, if the trial has taken place in London or Westminster, shall be made within four days after the trial, or on the first subsequent day on which a divisional court to which the application may be made shall have actually sat to hear motions. If the trial has taken place elsewhere than in London or Middlesex, the motion shall be made within the first four days of the next following sittings.

ORDER XL.—*Motion for Judgment.*

Ord. XL., Rules 4, 5, and 6.

7. Order XL., Rules 4 and 6 are repealed, and Rule 5 is repealed so far as it affects trials before a judge; and the following rule shall be substituted for Rule 4:—

Ord. XL., Rule 4.

4. Where, at or after the trial of an action by a jury, the judge has directed that any judgment be entered, any party may, without any leave reserved, apply to set aside such judgment and enter any other judgment, on the ground that the judgment directed to be entered is wrong by reason of the judge having caused the finding to be wrongly entered with reference to the finding of the jury upon the question or questions submitted to them.

Where, at or after the trial of an action before a judge, the judge has directed that any judgment be entered, any party may, without any leave reserved, apply to set aside such judgment and to enter any other judgment, upon the ground that, upon the finding as entered, the judgment so directed is wrong.

An application under this rule shall be to the Court of Appeal.

ORDER LVIIA.—*Divisional and other Courts.*

Ord. LVIIA., Rule 1.

8. The following proceedings and matters shall continue to be heard and determined before the divisional courts; but nothing herein contained shall be construed so as to take away or limit the power of a single judge to hear and determine any such proceedings or matters in any case in which he has heretofore had power to do so, or so as to require any interlocutory proceeding therein heretofore taken before a single judge to be taken before a divisional court:—

Proceedings on the crown side of the Queen's Bench Division.

Appeals from revising barristers, and proceedings relating to election petitions, parliamentary and municipal.

Appeals under section 6 of the County Courts Act, 1875.

Proceedings on the revenue side of the Exchequer Division.

Proceedings directed by any act of parliament to be taken before the court, and in which the decision of the court is final.

Cases stated by the railway commissioners under the 36 & 37 Vict. c. 48.

Cases of habeas corpus, in which a judge directs that a rule nisi for the writ, or the writ be made returnable before a divisional court. *R. S. C., Dec.* 1876.

Special cases where all parties agree that the same be heard before a divisional court.

Appeals from chambers in the Queen's Bench, Common Pleas and Exchequer Divisions, and applications for new trials in the said division where the action has been tried with a jury,

9. Where, by sect. 17 of the Appellate Jurisdiction Act, 1876, or by these rules, any application ought to be made to, or any jurisdiction exercised by the judge before whom an action has been tried, if such judge shall die or cease to be a judge of the High Court, or if such judge shall be a judge of the Court of Appeal, or if for any other reason it shall be impossible or inconvenient that such judge should act in the matter, the president of the division to which the action belongs may either by a special order in any action or matter, or by a general order applicable to any class of actions or matters, nominate some other judge to whom such application may be made, and by whom such jurisdiction may be exercised. Ord. LVIIA., Rule 2.

10. Every vacation judge shall have the same power and authority as heretofore. Ord. LVIIA., Rule 3.

ORDER LVIII.—*Appeals from Inferior Courts.*

11. Rule 16 of the Rules of the Supreme Court, December, 1875, is hereby repealed, and instead thereof the following provision shall take effect:— Ord. LVIII., Rule 19.

Every judge of the High Court of Justice for the time being shall be a judge to hear and determine appeals from inferior courts, under section 45 of the Supreme Court of Judicature Act, 1873. All such appeals (except admiralty appeals from inferior courts, which until further order shall be assigned as heretofore to the present judge of the Admiralty Court) shall be entered in one list by the officers of the crown office of the Queen's Bench Division; and shall be heard by such divisional court of the Queen's Bench, Common Pleas, or Exchequer Division, as the presidents of those divisions shall from time to time direct.

Nothing in this order shall affect the validity of any rule or regulation heretofore issued with reference to such appeals by the divisional court formed under the said section.

CAIRNS, C.
A. E. COCKBURN.
G. JESSEL.
COLERIDGE.
FITZROY KELLY.
WM. BALIOL BRETT.
ROBT. LUSH.
C. E. POLLOCK.
H. MANISTY.

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RULES OF THE SUPREME COURT, MAY, 1877.

1. These rules may be cited as "The Rules of the Supreme Court, May, 1877," or each separate rule may be cited as if it had been one of the Rules of the Supreme Court, and had been numbered by the number of the order and rule mentioned in the margin.

2. These rules shall come into operation on the 1st June, 1877.

*R. S. C.*, *May*, 1877.

## ORDER XIV.

*Leave to Defend where Leave specially Indorsed.*

Ord. XIV., Rule 1.

3. Order XIV., Rule 1, of the Rules of the Supreme Court is hereby repealed, and the following rule is substituted:—

Where the defendant appears to a writ of summons specially indorsed under Order III., Rule 6, the plaintiff may, on affidavit made by himself, or by any other person who can swear positively to the debt or cause of action, verifying the cause of action, and stating that in his belief there is no defence to the action, call on the defendant to show cause before the court or a judge why the plaintiff should not be at liberty to sign final judgment for the amount so indorsed, together with interest, if any, and costs. A copy of the affidavit shall accompany the summons or notice of motion. The court or a judge may thereupon, unless the defendant, by affidavit or otherwise, satisfy the court or a judge that he has a good defence to the action on the merits, or disclose such facts as may be deemed sufficient to entitle him to defend, make an order empowering the plaintiff to sign judgment accordingly.

CAIRNS, C.
A. E. COCKBURN.
G. JESSEL.
COLERIDGE.
FITZROY KELLY.
WM. BALIOL BRETT.
ROBT. LUSH.
C. E. POLLOCK.
H. MANISTY.

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## RULES OF THE SUPREME COURT, JUNE, 1877.

1. These rules may be cited as "The Rules of the Supreme Court, June, 1877," or each separate rule may be cited as if it had been one of the Rules of the Supreme Court, and had been numbered by the number of the order and rule mentioned in the margin.

2. These rules shall come into operation on the 19th June, 1877.

## ORDER V.

Ord. V., Rule 4a.

Subject to the power of transfer, and subject also to the power of the Lord Chancellor by order from time to time otherwise to direct, every cause or matter which shall be commenced in the Chancery Division of the High Court shall be assigned to one of the judges thereof by marking the same with the name of such of the same judges as the plaintiff or petitioner may in his option think fit.

## ORDER LI.

Ord. LI., Rule 1a.

In the Chancery Division a transfer of a cause from one judge to another may by the same or a separate order be ordered to be made or to be deemed to have been made for the purpose only of trial or of hearing, and in such case the original and any further hearing shall take place before the judge to whom the cause shall be so transferred; but all other proceedings therein, whether before or after the hearing or trial of the cause, shall be taken and prosecuted in the same manner as if such cause had not been transferred from the judge to whom it was assigned at the time of transfer, and as if such judge had made the decree or judgment, if any, made therein, unless the judge to whom the cause is transferred shall direct that any further proceedings therein, before or after the

hearing or trial thereof, shall be taken and prosecuted before himself or before an official or special referee. *R. S. C., Nov.* 1878.

Cairns, C.
A. E. Cockburn.
G. Jessel.
Robt. Lush.

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## Rules of the Supreme Court, November, 1878.

1. These rules may be cited as "The Rules of the Supreme Court, November, 1878," or each separate rule may be cited as if it had been one of the rules of the Supreme Court, and had been numbered by the number of the order and rule mentioned in the margin.

2. These rules shall come into operation on the 18th November, 1878.

### Order 31.

3. Rules 5 and 8 of Order 31 are hereby repealed; the following rule is substituted for the same:—

*Rule 5.*

Any objection to answering any one or more of several interrogatories on the ground that it or they is or are scandalous or irrelevant, or not *bonâ fide* for the purpose of the action, or that the matters inquired into are not sufficiently material at that stage of the action, or on any other ground, may be taken in the affidavit in answer. Ord. XXXI., Rule 5.

An application to set aside the interrogatories on the ground that they have been exhibited unreasonably or vexatiously, or to strike out any interrogatory or interrogatories on the ground that it or they is or are scandalous, may be made at chambers within four days after service of the interrogatories.

### Order 54.

4. The exception contained in Rule 2 of Order 54 is hereby repealed so far as regards the proceedings hereinafter mentioned before the masters of the Queen's Bench, Common Pleas, and Exchequer Divisions, and such masters may exercise all such authority and jurisdiction as may be exercised by a judge at Chambers in respect of— Ord. LIV., Rule 2a.

*Discovery*, whether of documents or otherwise, and inspection, except inspection under Order LII., Rule 3;

*Orders nisi* for charging stock funds, annuities, or share of dividends, or annual proceeds thereof;

*Interpleader*, except where all parties concerned consent to a final determination of the question in dispute without a jury or special case, and except where the sum in dispute is less than 50*l.*, and one of the parties desires such a determination. In such cases the question shall be determined by the judge, unless the parties agree to refer it to the master.

Cairns, C.
G. Jessel, M. R.
Fitzroy Kelly, L. C. B.
Robt. Lush.
C. E. Pollock.

*R. S. C., March*, 1879.

## RULES OF THE SUPREME COURT, MARCH, 1879.

1. These rules may be cited as "The Rules of the Supreme Court, March, 1879," or each separate rule may be cited as if it had been one of the rules of the Supreme Court, and had been numbered by the number of the order and rule mentioned in the margin.

2. These rules shall come into operation on the 27th March, 1879.

### ORDER V.

Ord. V., Rule 4a.

3. If, in any action commenced and pending in any one of the Queen's Bench, Common Pleas, or Exchequer Divisions of the High Court, the trial shall take place before a judge of another of the said divisions, the cause shall from that time be transferred to the division of which such judge is a member.

### ORDER XIX.

Ord. XIX., Rule 29a.

4. When a cause in the Chancery Division is proceeding in a district registry, all certificates of the chief clerk and taxing masters and all affidavits and other documents (required to be filed) used in London before the judge in chambers, or before any taxing master or referee of the court, and not already filed in the district registry, shall be filed in the same office as they would have been filed in if the proceedings had originally commenced in London; and if the court or judge shall so direct, office copies thereof shall be transmitted to the district registry.

### ORDER XXXVI.

Ord. XXXVI., Rule 34.

5. Rule 34 is hereby annulled, and the following shall stand in lieu thereof:—

*Rule* 34.

The referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the court, or state any facts specially, with power to the court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the court may direct; and the court shall have power to require any explanation or reasons from the referee, and to remit the cause or matter, or any part thereof, for re-trial or further consideration to the same or any other referee; or the court may decide the question referred to any referee on the evidence taken before him, either with or without additional evidence as the court may direct.

### ORDER XXXIX.

Ord. XXXIX., Rule 1a.

6. Rule 1*a* is hereby annulled, and the following shall stand in lieu thereof:—

*Rule* 1*a*.

Applications for new trials shall be by motion calling on the opposite party to show cause at the expiration of eight days from the date of the order, or so soon after as the case can be heard, why a new trial should not be directed. Such motion shall be made within the times following, unless the court, or a judge, shall enlarge the time:—

An application to a divisional court for a new trial, if the trial has taken place in London or Westminster, shall be made within four days after the trial, or on the first subsequent day on which a divisional court, to which the application may be made, shall have actually sat to hear motions. If the trial has taken place elsewhere than in London or Middlesex, the motion shall be made within seven days after the last day of sitting on the circuits for England and Wales during which the action shall have been tried, or within the first four days of the next following sittings, if such day occurs during or within a week immediately before a vacation.

ORDER LII.

7. Whenever the trusts of any will or settlement are being administered, and a sale is ordered of any property vested in the trustees of such will or settlement upon trust for sale or with power of sale by such trustees, the conduct of such sale shall be given to such trustees unless the judge shall otherwise direct. Ord. LII., Rule 6a.

ORDER LIV.

8. Rule 6 is hereby annulled, and the following shall stand in lieu thereof:— Ord. LIV., Rule 6.

*Rule* 6.

In the Queen's Bench, Common Pleas, and Exchequer Divisions, every appeal to the court from any decision at Chambers shall be by motion, and shall be made within eight days after the decision appealed against, or, if no court to which such appeal can be made shall sit within such eight days, then on the first day on which any such court may be sitting after the expiration of such eight days.

ORDER LVIII.

9. If upon the hearing of an appeal from a judgment pronounced by a judge or court on the verdict or finding of a jury, or of a judge without a jury, it shall appear to the Court of Appeal that a new trial ought to be had, it shall be lawful for the said Court of Appeal, if it shall think fit, to order that the verdict and judgment shall be set aside, and that a new trial shall be had. Ord. LVIII., Rule 5a.

ORDER LXI.

10. The Easter vacation in the present year shall, as regards the offices of the registrars and taxing masters of the Chancery Division, commence on Good Friday, and terminate on Saturday the 19th day of April. Ord. LXI., Rule 2a.

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RULES OF THE SUPREME COURT, DECEMBER, 1879.

1. These Rules may be cited as "The Rules of the Supreme Court, December, 1879," or each separate rule may be cited as if it had been one of the Rules of the Supreme Court, and had been numbered by the number of the order and rule mentioned in the margin.

2. These Rules shall come into operation on the 22nd December, 1879.

*R. S. C.*, *Dec.* 1879.

## ORDER XXXV.

Ord. XXXV., Rule 1b.

3. So much of Order XXXV., Rule 1*a*, as directs that actions in the Queen's Bench, Common Pleas, and Exchequer Divisions shall not be entered for trial in the District Registries is hereby repealed.

## ORDER XXXVI.

Ord. XXXVI., Rule 15a.

4. Order XXXVI., Rule 15, is hereby repealed, and the following rule substituted.

After notice of trial has been given of any action or issue to be tried elsewhere than in London or Middlesex, either party may at any time before the day next before the commission day enter the action or issue for trial at the next assizes in the district registry (if any) of the city or town where the trial is to be had, or with the associate at the assize town as heretofore.

So long as there is no district registry in the places enumerated in the first of the following columns, entries for trial may be made in the district registries in the second of the following columns, *i.e.*, actions and issues for trial at—

| | | |
|---|---|---|
| Bodmin - - | may be entered in the district registry at | Truro. |
| Carnarvon - - | ,, ,, | Bangor. |
| Chelmsford - - | ,, ,, | Colchester. |
| Lancaster - - | ,, ,, | Preston. |
| Lewes - - - | ,, ,, | Brighton. |
| Monmouth - - | ,, ,, | Newport, Mon. |
| Stafford - - | ,, ,, | Hanley. |
| Taunton or Wells | ,, ,, | Bridgwater. |
| Warwick - - | ,, ,, | Birmingham. |
| Winchester - - | ,, ,, | Southampton. |

The entry shall be made in a numbered list to be provided by the district registrar in such vacant number as the party entering shall select, and the list shall be open for the inspection of all parties interested therein at all times during office hours. At the time of entry two copies of the pleadings shall be delivered as directed by Order XXXVI., Rule 17*a*, one of which shall be duly stamped with the amount of the fee payable on entry of the cause for trial.

When the trial of an action or issue which has been entered for trial has been postponed or withdrawn under Order XXIII., Rule 2, or settled, the party who made the entry shall immediately thereupon give notice thereof to the registrar, and such entry shall be expunged from the list.

The registrar shall close the list and transmit a corrected copy of the said list, together with the two copies of the pleadings, to the associate at the assize town in such time that the same may be received at his office before the opening of the commission.

Causes or issues entered for trial by the associate shall be entered in such vacant numbers in the list so transmitted as the party entering may select. The list shall then be re-numbered consecutively, and shall be the cause list for the assizes.

If both parties enter the action or issue for trial, it shall be tried in the order of the plaintiff's entry, and the defendant's entry shall be vacated.

Order XLIa.—*Amendments of Judgments.*

5. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court or a judge on motion without an appeal. Ord. XLIa.

Order LX.

6. The office of master of the Supreme court of Judicature shall be deemed to be substituted for the several offices specified in the first part of the first schedule to the Supreme Court of Judicature (Officers) Act, 1879, and all enactments and documents referring to any of those offices, or to any of the persons holding them, shall, unless the context otherwise requires, be construed and have effect accordingly. Ord. LX., Rule 3.

Order LXa.—*Central Office.*

7. The central office shall, for the convenient despatch of business, be divided into the departments specified in the first column of the following scheme, and the business and staff of the office shall be distributed among the departments in accordance with that scheme. Ord. LXa., Rule 1.

Scheme.

| Name of Department. | Business. | Staff. |
|---|---|---|
| 1. Writ, appearance, and judgment .. | The sealing and issue of writs of summons for the commencement of actions.<br>The entry in the cause book of writs of summons, appearances, and judgments.<br>The sealing and issue of notices for service under Order XVI., Rule 18.<br>The receipt and filing of pleadings delivered on entry of judgment.<br>The transaction of all business heretofore conducted in the Record and Writ Office, except such part thereof as is transacted in the Record department. | The clerks employed in similar duties in the Record and Writ Office. Such of the clerks employed in the issue of writs and the entry of appearances and judgments in the Master's offices of the Queen's Bench, Common Pleas, and Exchequer Divisions as may be selected by the Masters for the purpose. And such of the officers employed under the Registrars of the Probate, Divorce, and Admiralty Divisions as are selected for transfer to the central office. |
| 2. Summons and Order .. | The issue of summonses in the Queen's Bench, Common Pleas, and Exchequer Divisions, and the drawing up of all orders made either in court or in chambers in those divisions. | The clerk employed in the Rule offices, and such of the other clerks in the Master's offices of the Queen's Bench, Common Pleas, and Exchequer Divisions as may be selected by the Masters for the purpose. And such additional clerks as may be appointed from time to time for the purpose. |

*R. S. C., Dec.* 1879.

| Name of Department. | Business. | Staff. |
|---|---|---|
| 3. Filing and Record..... | The filing of all affidavits to be filed in the Central Office, and all depositions to be used in the Chancery Division, and such other documents as may from time to time be directed by the Masters to be filed, and the making and examination of office copies of documents filed in the department.<br>The custody of all deeds and documents ordered to be left with the Masters.<br>The business heretofore performed in the Report Office under the direction and control of the Clerks of Records and Writs. | The clerks and writers employed in similar duties in the Record and Writ Office with such additional clerks and such writers and messengers as may be from time to time found necessary. |
| 4. Taxing.... | The taxation of costs in the Queen's Bench, Common Pleas, and Exchequer Divisions, except such costs as have heretofore been taxed in the Queen's Remembrancer's Office or the Crown Office. | Such of the clerks in the Master's offices of these three divisions as may be selected by the Masters for the purpose. |
| 5. Enrolment | The business heretofore performed in the Enrolment Office. | The clerks of the Enrolment Office. |
| 6. Judgments | The registry of judgments, executions, &c. | The clerks employed in similar duties under the Registrar of Judgments. |
| 7. Bills of Sale | The registry of bills of sale and other duties connected therewith. | The clerks employed in similar duties under the Masters of the Queen's Bench Division as registrars of bills of sale. |
| 8. Married Women's acknowledgments.... | The registry of acknowledgments of deeds by married women. | The clerks employed in similar duties under the Registrar of Acknowledgments of deeds by married women. |
| 9. Queen's Remembrancer.. | The business heretofore performed in the Queen's Remembrancer's Office. | The clerks of the Queen's Remembrancer's Office. |
| 10. Crown Office | The business heretofore performed in the Crown Office. | The clerks of the Crown Office. |
| 11. Associates.. | The business heretofore performed in the Associates' Offices. | The clerks of the three Associates. |

8. It shall be the special duty of one of the masters to be present at, and control the business of, the central office, and he shall give the necessary directions with respect to questions of practice and procedure relating to the business of the central office. The masters shall select five of their number to discharge this duty in turn, according to a rota to be fixed by themselves. *R. S. C., April*, 1880. Ord. LXa., Rule 2.

9. A sufficient number of masters, not being less than three, shall, except in vacation, attend each day at the central office to tax costs. In vacation one master shall so attend. The taxing masters shall be selected according to a rota to be fixed by the masters. Ord. LXa., Rule 3.

10. Every master, and every first and second-class clerk in the filing and record department, shall, by virtue of his office, have authority to take oaths and affidavits in the Supreme Court. Ord. LXa., Rule 4.

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## Rules of the Supreme Court, April, 1880.

1. These rules may be cited as the Rules of the Supreme Court, April, 1880, or each separate rule may be cited as if it had been one of the Rules of the Supreme Court, and had been numbered by the number of the order and rule mentioned in the margin. Mode of citing.

2. These rules shall come into operation on the 6th day of April, 1880. Commencement.

### Order II.—*Writs of Summons and Procedure.*

3. Order II., Rule 6, is hereby annulled, and no writ shall hereafter be issued under the Summary Procedure on Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67). Bills of Exchange. Ord. II., Rule 6a.

### Order V.—*Issue of Writs of Summons.*

4. Every writ of summons not issued out of a district registry shall be issued out of the central office. Issue of writ from Central Office. Ord. V., Rule 1a.

### Order XII.—*Appearance.*

5. Appearances entered in London shall be entered in the central office. Appearances in Central Office. Ord. XII., Rule 1a.

In probate actions notice of appearances entered shall forthwith be given by the central office to the Probate Registry.

6. Order XII., Rule 6a, of the Rules of the Supreme Court is hereby annulled and the following shall stand in lieu thereof:—

A defendant shall enter his appearance to a writ of summons by delivering to the proper officer a memorandum in writing dated on the day of its delivery, and containing the name of the defendant's solicitor, or stating that the defendant defends in person. Notice of appearance. Ord. XII., Rule 6b.

He shall at the same time deliver to the officer a duplicate of the memorandum, which the officer shall seal with the official seal, showing the date on which it is sealed, and then return to the person entering the appearance, and the duplicate memorandum so sealed shall be a certificate that the appearance was entered on the day indicated by the seal.

A defendant shall, on the day on which he enters an appearance to a writ of summons, give notice of his appearance to the plaintiff's solicitor, or, if the plaintiff sues in person, to the plaintiff himself. The notice may be given either by notice in writing served in the ordinary way at the address for service, or by prepaid letter directed

*R. S. C., April*, 1880.

to that address and posted on the day of entering appearance in due course of post, and shall in either case be accompanied by the sealed duplicate memorandum.

ORDER XVI.—*Parties.*

Service of notice on infant or person of unsound mind. Ord. XVI., Rule 12a.

7. Notice of a judgment or order pursuant to the Act 15 & 16 Vict. c. 86, s. 42, on an infant or person of unsound mind not so found by inquisition shall be served in the same manner as a writ of summons in an action.

Parties to administration proceeding. Ord. XVI., Rule 12b.

8. In any cause for the administration of the estate of a deceased person, no party to the cause other than the executor or administrator shall, unless by leave of the judge, be entitled to appear either in court or in chambers on the claim of any person not a party to the cause against the estate of the deceased in respect of any debt or liability. The judge may direct any other party to the cause to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as he shall think fit.

ORDER XXXIV.—*Questions of Law.*

Agreement as to payment of money and costs. Ord. XXXIV., Rule 6.

9. The parties to a special case may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, that on the judgment of the court being given in the affirmative or negative of the question or questions of law raised by the special case, a sum of money, fixed by the parties, or to be ascertained by the court, or in such manner as the court may direct, shall be paid by one of the parties to the other of them, either with or without costs of the action, and the judgment of the court may be entered for the sum so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed on appeal.

Application of order, &c. Ord. XXXIV., Rule 7.

10. This order shall apply to every special case stated in an action, or in any proceeding incidental to an action. No special case shall hereafter be stated under the Act 13 & 14 Vict. c. 35.

ORDER XXXV.—*Proceedings in District Registries.*

Proceedings necessary or incidental to judgment. Ord. XXXV., Rule 3a.

11. Where an action proceeds in a district registry, all proceedings relating to the following matters, namely:—

(*a*) Leave to issue or renew writs of execution;
(*b*) Examination of judgment debtors for garnishee purposes;
(*c*) Garnishee orders;
(*d*) Charging orders nisi,

shall, unless the court or a judge otherwise order, be taken in the district registry.

ORDER XXXVII.—*Evidence generally.*

Form of affidavits. Ord. XXXVII. Rule 3a.

12. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. Every affidavit shall be written or printed bookwise. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule.

Description and address of deponent to be stated. Ord. XXXVII. Rule 3b.

13. Every affidavit shall state the description and true place of abode of the deponent.

14. In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

Affidavits by two or more deponents. Ord. XXXVII. Rule 3c.

15. Every affidavit shall be filed in the Central Office. There shall be appended to every affidavit a note showing on whose behalf it is filed.

16. No affidavit having in the jurat or body thereof any interlineations, alteration, or erasure shall without leave of the court or a judge be read or made use of in any matter depending in court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, or, if taken at the Central Office, either by his initials or by the stamp of that office, nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialed in the margin of the affidavit by the officer taking it.

Affidavit to be filed. Ord. XXXVII. Rule 3d.

Alterations in affidavits. Ord. XXXVII. Rule 3e.

17. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his or her signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the court or a judge is otherwise satisfied that the affidavit was read over to and apparently perfectly understood by the deponent.

Affidavits by illiterate persons. Ord. XXXVII. Rule 3f.

18. In cases in which by the present practice an original affidavit is allowed to be used, it shall before it is used be stamped with a proper filing stamp, and shall at the time when it is used be delivered to and left with the proper officer in court or in chambers, who shall send it to the Central Office. An office copy of an affidavit may in all cases be used, the original affidavit having been previously filed in the Central Office, and the copy duly authenticated with the seal of that office.

Stamping of affidavits, and use of office copies. Ord. XXXVII. Rule 3g.

## Order XLI.—*Entry of Judgment.*

19. All judgments in the Queen's Bench, Common Pleas, and Exchequer Divisions shall, if entered in London, be entered in the Central Office.

Judgments, when to be entered in Central Office. Ord. XLI., Rule 1a.

## Order XLII.—*Execution.*

20. Upon any judgment drawn up by the chancery registrars for the recovery of a sum of money and costs there may continue to be, at the election of the claimant, either one writ or separate writs of execution for the recovery of the sum and for the recovery of the costs, but a second writ shall only be for costs and shall be issued not less than eight days after the first writ.

Execution on judgment in Chancery Division. Ord. XLII., Rule 15a.

## Order XLVI.—*Charging of Stock or Shares and Distringas.*

21. Order XLVI., Rule 2, is hereby annulled, and no writ of distringas shall hereafter be issued under the Act 5 Vict. c. 5, s. 5.

Writ of distringas not to issue. Ord. XLVI., Rule 2a.

22. In the following rules of this order the expression "Company" includes the governor and company of the Bank of England and any other public company, whether incorporated or not, to

Meaning of "company" and "stock."

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which 5 Vict. c. 5, s. 5, applies, and the expression "stock" includes shares, securities, and money.

Ord. XLVI., Rule 3.

Filing and service of affidavit and notice as to stock.

23. Any person claiming to be interested in any stock standing in the books of a company may, on making an affidavit in or to the effect of the form B. 28 in the schedule hereto, and on filing the same in the central office with a notice in or to the effect of the form B. 23 in the same schedule annexed thereto, and on procuring an office copy of the affidavit and a duplicate of the filed notice authenticated by the seal of the central office, serve the office copy and duplicate notice on the company.

Ord. XLVI., Rule 4.

Affidavit to state address of claimant.

24. There shall be appended to the affidavit a note stating the person on whose behalf it is filed, and to what address notices (if any) for that person are to be sent. All such notices shall be deemed to have been duly sent if sent through the post by a prepaid letter directed to that person at the address so stated or at any such substituted address as herein-after mentioned, whether the person to whom the notice is sent is living or not.

Ord. XLVI., Rule 5.

Alteration of address.

25. The address so stated may, from time to time, be altered by the person by or on whose behalf the affidavit is filed, but all notices sent by post before the alteration to the address originally given or for the time being substituted therefor shall not be affected by any subsequent alteration. Any such alteration of address may be made by service of a memorandum thereof on the company in the manner required for service of a notice under this order.

Ord. XLVI., Rule 6.

Service of affidavit and filed notice to have same effect as writ of distringas.

26. The service of the office copy of the affidavit and of the duplicate of the filed notice shall for the period of five years from the day of service, but not longer (unless the notice is renewed as after mentioned), have the same force and effect as if these rules had not been made and a writ of distringas in respect of the stock had been duly issued under the Act 5 Vict. c. 5, s. 5.

Ord. XLVI., Rule 7.

Renewal of notice.

27. The original notice may be kept on foot from time to time by a notice of renewal signed by the person by whom or on whose behalf the original notice was given, and served on the company, provided the notice of renewal, if only one is given, is served before the expiration of five years from the day on which the original notice was served, or, if more than one is given, then before the expiration of five years from the day on which the last previous notice of renewal was served. Each such notice of renewal shall have the effect of continuing and keeping on foot the original notice for the period of five years from the day on which the first notice of renewal or the last previous notice of renewal (as the case may be) was served.

Ord. XLVI., Rule 8.

Withdrawal or discharge of notice.

28. A notice filed under this order may at any time be withdrawn by the person by whom or on whose behalf it was given on a written request signed by him, or its operation may be made to cease by an order to be obtained by motion on notice or by petition duly served by any other person claiming to be interested in the stock sought to be affected by the notice.

Ord. XLVI., Rule 9.

Effect of request for transfer of stock or payment of dividend.

29. If, whilst a notice filed under this order continues in force, the company on whom it is served receive from the person in whose name the stock specified in the notice is standing, or from some person acting on his behalf or representing him, a request to permit the stock to be transferred or to pay the dividends thereon, the company shall not by force or in consequence of the service or of any renewal of the notice, be authorized, without the order of the court, to refuse to permit the transfer to be made or to withhold

Ord. XLVI., Rule 10.

the payment of the dividends for more than eight days after the date of the request.

Amendment of description of stock. Ord. XLVI., Rule 11.

30. If the person who files a notice under this order desires to correct the description of the stock referred to in the filed notice he may file an amended notice and serve on the company a duplicate thereof sealed with the seal of the Central Office, and in that case the service of the notice shall be deemed to have been made on the day on which the amended duplicate is so served.

ORDER XLVII.—*Writs of Subpœna and Sequestration.*

No subpœna or, without leave, sequestration for costs. Ord. XLVII., Rule 2.

31. No subpœna for the payment of costs, and, unless by leave of the court or a judge, no sequestration to enforce such payment shall be issued.

ORDER LII.—*Interlocutory Orders as to Mandamus, Injunction or Interim Preservation of Property, &c.*

Writ of injunction abolished. Ord. LII., Rule 8.

32. No writ of injunction shall be issued. An injunction shall be by a judgment or order, and any such judgment or order shall have the effect which a writ of injunction previously had.

ORDER LIV.—*Applications at Chambers.*

Procedure in chambers. Ord. LIV., Rule 7.

33. The following Rules numbered 34 to 40, both inclusive, shall apply to all applications at Chambers in the Queen's Bench, Common Pleas, and Exchequer Divisions.

Forms of summons. Ord. LIV., Rule 8.

34. A summons shall be in the form H. 1 in the schedule hereto, with such variations as circumstances require. It shall be addressed to all the persons on whom it is to be served.

Preparation and issue of summons. Ord. LIV., Rule 9.

35. A summons shall be prepared by the applicant or his solicitor, and shall be sealed in the Central Office, and when so sealed shall be deemed to be issued. The person obtaining a summons shall leave a copy thereof at the Central Office.

Hours of returns. Ord. LIV., Rule 10.

36. Unless a judge otherwise specially directs, summonses for time only shall be returnable at 10.30 in the forenoon, and be heard by the masters in priority to other business. Unless as aforesaid, other summonses shall be returnable at successive hours, commencing at 11 in the forenoon, and summonses to be attended by counsel shall not be returnable before 2 in the afternoon. In settling the number of summonses returnable at each hour regard shall be had to the nature of the several applications.

List of summonses. Ord. LIV., Rule 11.

37. Each summons, not being a summons for time only, shall, when issued, be entered by the proper officer in a list. The lists of summonses shall distinguish those which a master has jurisdiction to hear from those which a master has not jurisdiction to hear, and those which are to be attended by counsel from those which are not to be so attended.

Hearing of summonses. Ord. LIV., Rule 12.

38. The summonses in each list for hearing by a judge or master shall be called on in their order. If when a summons is called on neither party appears, the summons shall be passed over until the list for the hour has been gone through. The summonses passed over shall then be called on a second time in their order. If neither party appears to a summons so called on it shall be struck out. If one party only appears such order as seems just may, on an affidavit of service, be made ex parte. An affidavit of non-attendance shall not be required or allowed.

*R. S. C., April*, 1880.

Form of order. Ord. LIV., Rule 13.

39. An order shall be in the form H. 2 in the schedule hereto, with such variations as circumstances require. It shall be sealed, and shall be marked with the name of the judge or master by whom it is made.

Filing consents to orders and adjournments. Ord. LIV., Rule 14.

40. Written consents to orders and adjournments shall be filed at the Central Office.

### ORDER LV.—*Costs.*

Security for costs where given by bond. Ord. LV., Rule 3.

41. Where a bond is to be given as security for costs, it shall, unless the court or a judge otherwise directs, be given to the party or person requiring the security, and not to an officer of the court.

### ORDER LVII.—*Time.*

Enlargement of time by consent. Ord. LVII., Rule 6a.

42. The time for delivering or amending any pleading may be enlarged by consent in writing, without application to the court or a judge.

Service. Ord. LVII., Rule 8.

43. Service of pleadings, notices, summonses, orders, rules, and other proceedings shall be effected before the hour of six in the afternoon, except on Saturdays, when it shall be effected before the hour of two in the afternoon. Service effected after six in the afternoon on any weekday except Saturday shall be deemed to have been effected on the following day. Service effected after two in the afternoon on Saturday shall be deemed to have been effected on the following Monday.

### ORDER LIX.—*Effect of Non-compliance and Amendment.*

Amendment. Ord. LIX., Rule 2.

44. The court or a judge may at any time, and on such terms as to costs or otherwise as to the court or judge may seem just, amend any defect or error in any proceedings; and all such amendments may be made as may be necessary for the purpose of determining the real question or issue raised by or depending on the proceedings.

### ORDER LXA.—*Central Office.*

Seals of Central Office. Ord. LXA., Rule 5.

45. The official seals to be used in the Central Office shall be such as the Lord Chancellor from time to time directs.

All copies, certificates, and other documents appearing to be sealed with a seal of the Central Office shall be presumed to be office copies or certificates or other documents issued from the Central Office, and if duly stamped may be received in evidence, and no signature or other formality, except the sealing with a seal of the Central Office, shall be required for the authentication of any such copy, certificate, or other document.

Enrolment of deeds. Ord. LXA., Rule 6.

46. All deeds which by any statute or statutory rule are directed or permitted to be enrolled in any of the courts whose jurisdiction has been transferred to the High Court of Justice may be enrolled in the enrolment department of the Central Office.

Judgments, &c., not to be registered after 2 p.m. Ord. LXA., Rule 7.

47. The registrar of judgments shall not receive any memorandum of a judgment, execution, lis pendens, order, rule, annuity, crown debt, or other incumbrance, or any memorandum of satisfaction relating to the same, for registration, after the hour of two in the afternoon.

Searches and certificates of search.

48. The clerk of enrolments and each of the following registrars, namely,—

The registrar of bills of sale,

The registrar of certificates of acknowledgments of deeds by married women, and

The registrar of judgments

shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the registers or indexes under his custody, and issue a certificate of the result of the search. Ord. LXa., Rule 8.

A person shall not inspect nor take any extract from any of these registers or indexes, or any document filed in connexion therewith, until he has specified in writing to the officer in charge of the register or index the name against which he wishes to search, and has satisfied the officer as to the object of the search.

Registrars under Bills of Sale Act. Ord. LXa., Rule 9.

49. The masters shall be the registrar for the purposes of the Bills of Sale Act, 1878, and any one of the masters may perform all or any of the duties of the registrar.

Memorandum of satisfaction of bill of sale. Ord. LXa., Rule 10.

50. A memorandum of satisfaction may be ordered to be written upon a registered copy of a bill of sale on a consent to the satisfaction, signed by the person entitled to the benefit of the bill of sale, and verified by affidavit, being produced to the registrar, and filed in the Central Office.

Where this consent cannot be obtained the registrar may, on application by summons, and on hearing the person entitled to the benefit of the bill of sale, or on affidavit of service of the summons on that person, and in either case on proof to the satisfaction of the registrar that the debt (if any) for which the bill of sale was made has been satisfied or discharged, order a memorandum of satisfaction to be written upon a registered copy thereof.

Restrictions on removal of documents from Central Office. Ord. LXa., Rule 11.

51. No affidavit or record of the court shall be taken out of the Central Office without the order of a judge or master, and no subpœna for the production of any such document shall be issued.

52. Such variations shall be made in the forms prescribed by or under the Supreme Court of Judicature Acts, 1873, 1875, and 1877 as are requisite for giving effect to these rules.

Forms. Ord. LXa., Rule 12.

The additional forms contained in the schedule hereto shall be used in or for the purposes of the Central Office, with such variations as circumstances require.

The masters may from time to time prescribe the use in or for the purpose of the Central Office of such modified or additional forms as may be deemed expedient.

## Order LXI.—*Sittings and Vacations.*

Office hours. Ord. LXI., Rule 4c.

53. The office hours in the several offices of the Supreme Court, other than the Summons and Order, Crown Office, and Associates Departments of the Central Office, shall be from ten in the forenoon to four in the afternoon, except on Saturday and in vacation, when the offices shall close at two in the afternoon. In the excepted departments the hours shall be from eleven in the forenoon to five in the afternoon, except on Saturday and in vacation, when the hours shall be from eleven in the forenoon to three in the afternoon.

## Order LXII.—*Exceptions from the Rules.*

Proceedings excepted from rules. Ord. LXII., Rule 1.

54. Order LXII is hereby annulled, and the following shall stand in lieu thereof.

Subject to the provisions of this Order, nothing in these rules

*R. S. C., April*, 1880.

shall affect the procedure or practice in any of the following causes or matters:—

1. Criminal proceedings.
2. Proceedings on the crown side of the Queen's Bench Division.
3. Proceedings on the revenue side of the Exchequer Division.
4. Proceedings for Divorce or other Matrimonial Causes.

Application of certain rules to excepted proceedings. Ord. LXII., Rule 2.

55. The following rules of the Supreme Court shall, as far as they are applicable, apply to all civil proceedings on the crown side of the Queen's Bench Division, and to all proceedings on the revenue side of the Exchequer Division; namely,—

Order LV. (Costs).
Order LVI. (Notices and papers, &c.).
Order LVII. (Time).
Order LVIII. (Appeals).

Special case. Ord. LXII., Rule 3.

56. The parties to any civil proceeding on the crown side of the Queen's Bench Division, or to any proceeding on the revenue side of the Exchequer Division, may, at any time after the proceeding is commenced, concur in stating any question or questions of law arising in the proceeding in the form of a special case for the opinion of the court, and the provisions of Order XXXIV. shall, as far as they are applicable, apply to any special case so stated, as if it had been stated in an action.

Amendment. Ord. LXII., Rule 4.

57. The court or a judge may at any time, and on such terms as to costs or otherwise as to the court or judge may seem just, amend any defect or error in any civil proceeding on the crown side of the Queen's Bench Division, or in any proceeding on the revenue side of the Exchequer Division, and all such amendments may be made as may be necessary for the purpose of determining the real question or issue raised by or depending on the proceeding.

Non-compliance with rules. Ord. LXII., Rule 5.

58. Non-compliance with any rule of practice or procedure for the time being in force with respect to civil proceedings on the crown side of the Queen's Bench Division, or to proceedings on the revenue side of the Exchequer Division, shall not render the proceedings void unless the court or a judge so direct, but the proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and on such terms as the court or judge may think fit.

Mandamus, quo warranto, and prohibition to be deemed civil proceedings. Ord. LXII., Rule 6.

59. For the purposes of this order, proceedings in mandamus, quo warranto, and prohibition shall be deemed civil proceedings.

## ORDER LXIII.—*Interpretation of Terms.*

Interpretation of terms. Ord. LXIII., Rule 2.

60. In these rules the expression "Central Office" means the Central Office of the Supreme Court of Judicature; and the expression "master" means a master of the Supreme Court of Judicature.

In the Supreme Court of Judicature (Officers) Act, 1879, and in Order LX., the expression "officer of the Supreme Court" shall mean any officer paid wholly or partly out of public money who is attached to the Supreme Court, the High Court of Justice, or the Court of Appeal, or to any judge of any of those courts, and is not an officer attached to the person of a judge, and removable by him at pleasure.

The term "these rules" as used in the rules of the Supreme Court shall include any rules made in amendment of or addition to those rules.

ORDER LXIV.—*Scheme under Railway Companies Act*, 1867.

61. Rules 21 to 28, both inclusive, of the order of court made under the Railway Companies Act, 1867, are hereby annulled. Annulling of certain rules as to enrolment of scheme under 30 & 31 Vict. c. 127.

62. A scheme under the Railway Companies Act, 1867, shall be enrolled in the Enrolment Department of the Central Office. Mode of enrolment of scheme.

63. A scheme under that act shall not be enrolled unless notice of the order confirming it has at least once in every entire week, reckoned from Sunday morning to Saturday evening, which elapses between the pronouncing of the order and the expiration of 30 days from the pronouncing thereof, been inserted in such two newspapers as shall have been appointed by the judge for the insertion of advertisements under the order made pursuant to that act, nor unless the newspapers containing those notices are produced to the proper officer when the scheme is presented for enrolment. Conditions of enrolment of scheme.

*Rules of the Supreme Court—(Costs).*

64. Order IV. of the additional Rules of the Supreme Court (Costs) is hereby annulled. Special case. Ord. IVa.

65. Rule 22 in the schedule to the additional Rules of the Supreme Court (Costs) is hereby annulled. Extension of time.

The costs of an application to extend the time for taking any proceeding shall, in the absence of an order by the court or a judge directing by whom they are to be paid, be in the discretion of the taxing master. Rule 22a.

[*Here follows a very long schedule of Forms, which see in their proper places*, ante, pp. 277 *et seq.*]

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RULES OF THE SUPREME COURT, MAY, 1880.

1. These rules may be cited as the "Rules of the Supreme Court, May, 1880," or each separate rule may be cited as if it had been one of the Rules of the Supreme Court, and had been numbered by the number of the order and rule mentioned in the margin. Mode of citing.

2. These rules shall come into operation on the 15th day of May, 1880. Commencement.

ORDER XXXV.—*District Registries.*

3. (*a.*) So much of Order XXXVII., Rule 3*d.*, as requires affidavits to be filed in the Central Office shall not apply to affidavits required to be filed in a district registry. Application of rules of April, 1880. Ord. XXXV., Rule 16.

(*b.*) Order LIV., Rules 7 to 14, both inclusive, shall not apply to proceedings in district registries.

(*c.*) The forms contained in the schedule to the Rules of the Supreme Court, April, 1880, may, as far as they are applicable, be used in or for the purposes of district registries, with such variations as circumstances require.

ORDER LIV.—*Applications at Chambers.*

4. Order LIV., Rule 10, shall have effect as if the words "and summonses to be attended by counsel shall not be returnable before two in the afternoon" were omitted therefrom. Hours of return. Order LIV., Rule 10a.

*R. S. C., April*, 1880.

ORDER LX*a*.—*Central Office.*

Searches. Ord. LXA., Rule 8a.

5. Order LX*a*, Rule 8, is hereby annulled, and the following shall stand in lieu thereof:

The clerk of enrolments and each of the following registrars, namely—

The registrar of bills of sale,

The registrar of certificates of acknowledgments of deeds by married women, and

The registrar of judgments,

shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the registers or indexes under his custody, and issue a certificate of the result of the search.

ORDER LXI.—*Sittings and Vacations.*

Whitsun vacation in Manchester district registry. Ord. LXI., Rule 4d.

6. The office of the district registry at Manchester shall not be open in any year on the five days next following Whit Monday.

Save as hereby varied, the Rules of the Supreme Court, December, 1879, and the Rules of the Supreme Court, April, 1880, shall be in force.

SELBORNE, C.
A. E. COCKBURN.
G. JESSEL, M. R.
FITZROY KELLY, L. C. B.
ROBT. LUSH.
C. E. POLLOCK.
NATHL. LINDLEY.
H. MANISTY.

# TIME TABLE.

ORDER LVII. deals generally with the subject of time. In counting the time, you do not reckon the day on which the act which is made the starting point, is done, but the day on which the pleading, &c., is delivered is included. When "clear days" are limited, neither the day of starting nor the day of delivering is reckoned. If the last day falls on a Sunday, or day on which the offices are closed, the step may be taken on the next day on which the offices are open. Otherwise Sunday, Christmas Day, and Good Friday are counted, unless the time limited is less than six days, in which case they are omitted. The period of the Long Vacation, from 10th August to 24th October, is not counted in the time for the delivery of *pleadings*.

The time appointed may be enlarged or abridged, and any enlargement may be ordered, although the application for the same is not made until after the expiration of the time appointed.

| Title. | Time Limited. | Reference and Special Provisions (if any). |
|---|---|---|
| AFFIDAVITS, | | |
| Filing of, by plaintiff, for use at trial. | 14 days after consent for taking evidence by affidavit. | O. xxxviii, r. 1, p. 218. Parties may agree, or order may be made as to time. |
| Filing of, by defendant. | 14 days after delivery of plaintiff's list. | O. xxxviii, r. 2, p. 218. Same special provision. |
| Filing of, by plaintiff in reply. | 7 days after expiration of above 14 days. | O. xxxviii, r. 3, p. 218. Same special provision. |
| AMENDMENT of Pleading, | Before time for reply and before reply, *or*, where no defence delivered, before 4 weeks from appearance. | O. xxvii, r. 2, p. 180. Once only. |
| By plaintiff, of statement of claim, without leave. | | |
| By defendant of set-off or counter-claim, without leave. | Before time for pleading to reply, and before pleading to reply, *or*, where no reply, before 28 days from defence. | O. xxvii, r. 3, p. 181. |
| Application by opposite party to disallow amendment. | 8 days from delivery of amended pleading. | O. xxvii, r. 4, p. 181. |

| Title. | Time Limited. | Reference and Special Provisions (if any). |
|---|---|---|
| AMENDMENT—*continued.* | | |
| Counter-amendment (by leave), after amendment without leave by opposite party, and amendment in all other cases by leave. | As limited by the order giving leave, *or*, if no time limited, 14 days from the date of the order. | O. xxvii, r. 7, p. 182. If the time expires the order lapses. |
| APPEAL from County Court to Divisional Court. | 8 days from judgment .... | County Court Act, 1875, s. 6, p. 540. O. lviii*a*, r. 1, p. 255. If court not sitting, rule nisi in chambers. |
| APPEAL from District Registrar, To judge. | 4 days ..... | O. xxxv. r. 7, p. 201. Either judge or registrar may enlarge time. |
| APPEAL from Chambers, From judge to court (in Queen's Bench, Common Pleas and Exchequer Division). | 8 days after decision appealed against. | O. liv, r. 6, p. 248. |
| From master to judge. | 4 days ..... | O. liv, r. 4, p. 247. Either judge or master may enlarge time. |
| APPEAL to Court of Appeal from High Court, From orders other than interlocutory. | 1 year from judgment .... | O. lviii, r. 15, p. 261. Time may be enlarged by special leave of Court of Appeal. |
| From interlocutory orders. | 21 days from order..... | O. lviii, r. 15, p. 261. Same special provision. |
| In winding-up or bankruptcy orders, or matters not being actions. | 21 days from order..... | O. lviii, r. 9, p. 260. Same special provision. |
| Notice of appeal from judgments. | 14 days' notice ..... | O. lviii, r. 4, p. 257. |
| From interlocutory orders. | 4 days' notice. | O. lviii, r. 4, p. 257. |
| Notice by respondent of intention to contend that decision should be varied (in case of final judgment). | 8 days' notice ..... | O. lviii, r. 7, p. 259. Omission to give notice may be ground for adjournment. |
| In case of interlocutory order. | 2 days' notice ..... | O. lviii, r. 7, p. 259. Same special provision. |
| APPEAL to House of Lords from Court of Appeal, | 1 year from judgment .... | Act of 1876, s. 11, p. 97. Lords' Standing Order, p. 476. |
| From any order or judgment. | ..... | Party under disability allowed 1 year from disability, up to 5 years. |
| Time for lodging appeal in English cases. | 6 weeks from presentation of appeal. | Lords' Standing Order, p. 476. |
| In Scotch and Irish cases. | 8 weeks from presentation of appeal. | Lords' Standing Order, p. 476. |

| Title. | Time Limited. | Reference and Special Provisions (if any). |
|---|---|---|
| APPEARANCE, | | |
| By defendant within jurisdiction. | 8 days after service of writ | O. ii, r. 3, p. 124, and App. A, Part I., Form 1, p. 277. |
| By defendant not within jurisdiction. | Within time limited by order allowing service. | |
| Notice of appearance elsewhere than where writ issued. | Same day as appearance .. | O. xii, r. 6*b*, p. 142. May be sent by post. |
| DEFENCE, | | |
| Where statement of claim delivered. | 8 days from delivery of statement of claim, or time for appearance, whichever is the last. | O. xxii, r. 1, p. 175. |
| Where statement of claim dispensed with and not delivered. | 8 days after appearance .. | O. xxii, r. 2, p. 175. |
| Where writ specially indorsed, and leave given to defend. | Within time limited by leave to defend, or 8 days if no time limited. | O. xxii, r. 3, p. 175. |
| DEMURRER, | | |
| To statement of claim. | 8 days ..... | O. xxviii, r. 3, p. 183. O. xxii, r. 1, p. 175. |
| To defence ..... | 3 weeks ..... | O. xxviii, r. 3, p. 183. O. xxiv, r. 1, p. 178. |
| To reply ..... | 4 days ..... | O. xxviii, r. 3, p. 183. O. xxiv, r. 3, p. 179. Unless extended by order. |
| ENTRY FOR TRIAL.... | 6 days from notice of trial | O. xxxvi, r. 10*a*, p. 208. |
| EXECUTION, | | |
| Issue of writ of fi. fa. or elegit to enforce judgment for payment of money. | Immediately after entry of judgment. | O. xlii, r. 15, p. 228. Stay of execution may be ordered. |
| Renewal of writ ..... | 1 year from date of original | O. xlii, r. 16, p. 228. By leave of court or judge. |
| Time within which execution may issue. | 6 years from judgment.... | O. xlii, rr. 18, 19, p. 229. After the 6 years, or if the parties have changed, leave must be obtained. |
| FINAL JUDGMENT, | | |
| Showing cause against, where writ specially endorsed. | 2 clear days after service by plaintiff of summons for final judgment. | O. xiv, r. 2, p. 150. |
| GUARDIAN ad Litem, | | |
| Notice of application for, in case of non-appearance by infant or person of unsound mind. | After time limited for appearance, and 6 clear days before day named in notice for application. | O. xiii, r. 1, p. 146. To be left at dwelling-house of person in charge, unless dispensed with. |

| Title. | Time Limited. | Reference and Special Provisions (if any). |
|---|---|---|
| INSPECTION of Documents,<br>Notice of time within 3 days for inspection given by party referring to documents in pleading to party who has given notice to produce for inspection. | Within 2 days from receipt of notice to produce for inspection, if all documents were contained in affidavit of documents; if not, within 4 days. | O. xxxi, r. 16, p. 195. |
| INTERPLEADER,<br>Application for leave to interplead. | Any time after service of writ, and before defence. | O. i, r. 2, p. 123. |
| INTERROGATORIES,<br>Delivery of—<br>By plaintiff. | At any time between delivery of statement of claim, and close of pleadings. | O. xxxi, r. 1, p. 190.<br>Without leave. |
| By defendant ..... | At any time between delivery of defence, and close of pleadings. | O. xxxi, r. 1, p. 190.<br>Without leave. |
| By either party ..... | At any time, with leave.... | O. xxxi, r. 1, p. 190. |
| Application to strike out.. | 4 days after service..... | O. xxxi, r. 5*a*, p. 192. |
| Filing of answer to..... | 10 days..... | O. xxxi, r. 6, p. 192.<br>Time may be extended by order. |
| JOINDER OF ISSUE,<br>If by way of reply. | 3 weeks after defence .... | O. xxiv, r. 1, p. 178.<br>Unless extended by order. |
| If after reply ..... | 4 days after previous pleading. | O. xxiv, r. 3, p. 179.<br>Unless extended by order. |
| JUDGMENT, Motion for,<br>Notice of setting down, action on. | Within time limited by leave, or 10 days after trial. | O. xl, r. 3, p. 221. |
| JUDGMENT, Setting aside, application for. | 6 days after trial. | O. xxxvi, r. 20, p. 210. |
| NEW TRIAL (in Town Cause),<br>Application for order to show cause. | 4 days after trial, or first subsequent motion day. | O. xxxix, r. 1*b*, p. 220.<br>Court or judge may extend time. |
| NEW TRIAL (in Country Cause),<br>Application for order to show cause against. | 7 days from the last day on the circuit, or if any of those days are in vacation, 4 days of next sittings. | O. xxxix, r. 1*b*, p. 220. |
| NEW TRIAL (in all Causes),<br>Showing cause against order. | After 8 days from the date of order. | |
| Service of copy of order on opposite party. | 4 days from date of order.. | O. xxxix, r. 2, p. 220. |

| Title. | Time Limited. | Reference and Special Provisions (if any). |
|---|---|---|
| NOTICE OF TRIAL, | | |
| To be given by plaintiff.. | 6 weeks from close of pleadings. | O. xxxvi, r. 4, p. 206. Unless time extended, defendant may then give notice, &c. |
| Length of, by either party | 10 days..... | O. xxxvi, r. 9, p. 207. Unless otherwise ordered. |
| Short notice ..... | 4 days ..... | O. xxxvi, r. 9, p. 207. By consent. |
| NOTICE by defendant for Trial by Jury. | 4 days from service of notice of trial. | O. xxxvi, r. 3, p. 205. |
| PAYMENT into Court, | | |
| In action to recover debt or damages. | At any time after writ, and before or with defence. | O. xxx, r. 1, p. 189. At any later time, by leave. |
| Service of notice of, upon plaintiff, if payment made before defence. | Immediately upon payment to officer of court. | O. xxx, r. 2, p. 189. |
| Notice by plaintiff of acceptance of sum paid in satisfaction. | 4 days after receipt of notice of payment, or if payment first stated in defence, any time before reply. | O. xxx, r. 4, p. 189. |
| Judgment for taxed costs after acceptance in satisfaction. | 48 hours after non-payment of taxed costs. | O. xxx, r. 4, p. 190. |
| REMOVAL from District Registry, | | |
| By defendant, if writ specially indorsed, and no application for final judgment within 4 days from appearance. | At any time after 4 days from appearance. | O. xxxv, r. 11, p. 202. |
| If writ specially indorsed, and leave to defend obtained. | At any time after leave to defend, and before defence or close of time for same. | O. xxxv, r. 11, p. 202. |
| If writ not specially indorsed. | At any time after appearance, and before defence or close of time for same. | O. xxxv, r. 11, p. 202. |
| REPLY..... | 3 weeks after defence .... | O. xxiv, r. 1, p. 178. Unless extended by order. |
| Further, of matters arising pending action. | 8 days after ground of reply arises. | O. xx, r. 2, p. 172. By leave. |
| Pleadings subsequent to.. | 4 days after previous pleading. | O. xxiv, r. 3, p. 179. Unless extended by order. |
| STATEMENT of Claim, | | |
| Delivery of, by plaintiff, unless dispensed with. | 6 weeks after appearance.. | O. xxi, r. 1, p. 173. Unless otherwise ordered. |
| Delivery of copy of amended, to new defendant. | 4 days after appearance .. | O. xvi, r. 16, p. 158. |

| Title. | Time Limited. | Reference and Special Provisions (if any). |
|---|---|---|
| STATEMENT—*continued.* | | |
| In Probate actions ..... | 6 weeks after appearance .. | O. xxi, r. 2, p. 174. Unless otherwise ordered, but plaintiff not compellable to deliver until after 8 days from filing of affidavit of scripts. |
| In Admiralty actions. | 12 days after appearance .. | O. xxi, r. 3, p. 174. |
| WARRANT OF ARREST (Admiralty action in rem), Filing of. | 6 days from service ..... | O. ix, r. 9, p. 138. The officer of the court serves, the solicitor files. |
| WRIT OF SUMMONS In force for. | 12 months ..... | O. viii, r. 1, p. 134. |
| If renewed by order .... | In force for 6 months .... | O. viii, r. 1, p. 134. |
| Indorsement of date of service upon. | Within 3 days from service | O. ix, r. 13, p. 138. |

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